

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 142

**COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
PETITIONER,**

vs.

**H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED JUNE 7, 1941.

CERTIORARI GRANTED OCTOBER 20, 1941.

No. 9456

United States
Circuit Court of Appeals

For the Ninth Circuit.

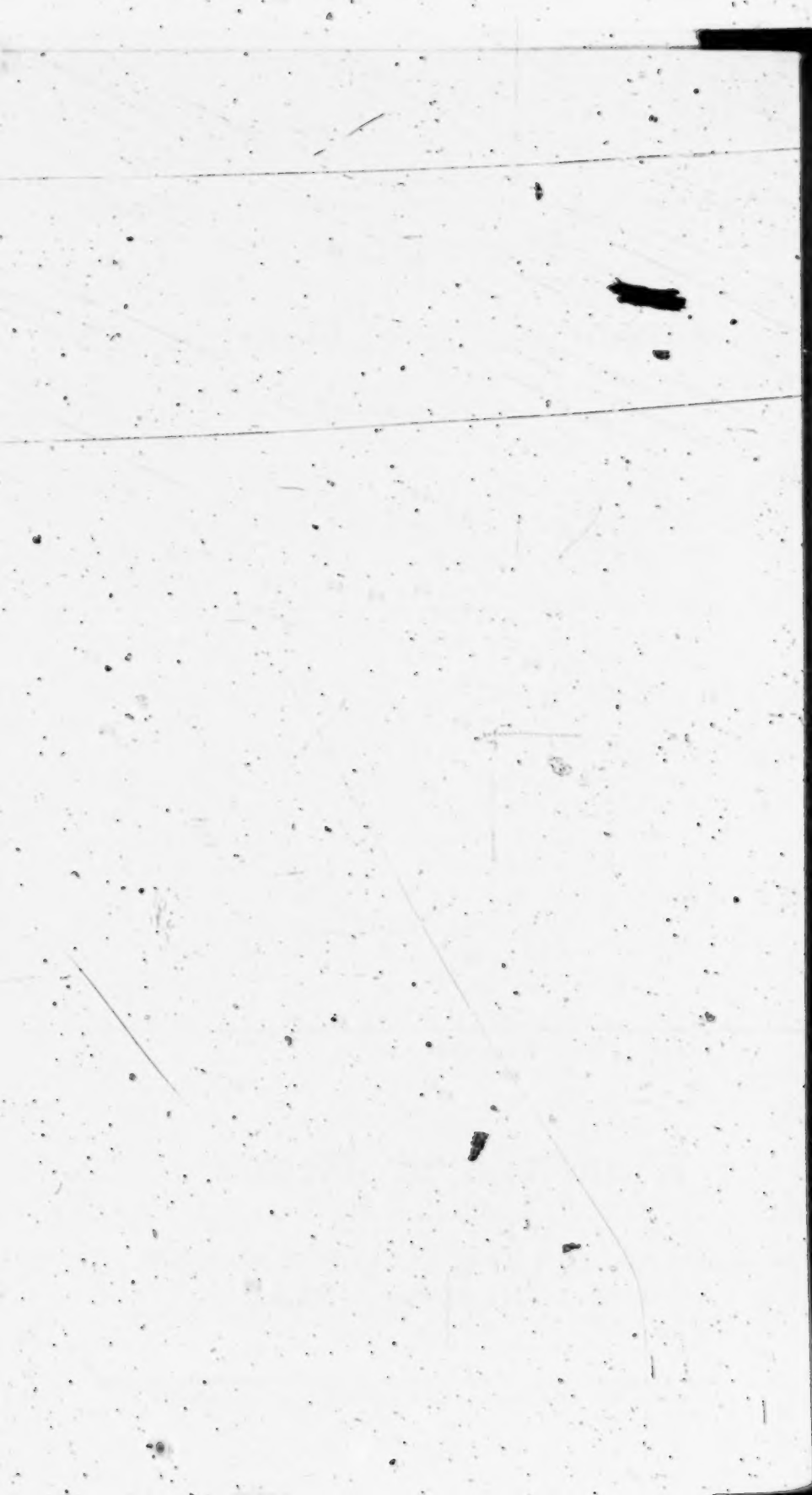
H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,
Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Oregon.



INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer	19
Answer of Charles Marks and Clyde Chase.....	30
Appeal:	
Bond on	126
Designation of Contents of Record on (Appellant) (Circuit Court of Appeals)	140
Designation of Contents of Record on (Appellant) (District Court).....	135
Designation of Contents of Record on (Appellee) (District Court).....	137
Notice of	125
Statement of Points on (Circuit Court of Appeals)	140
Statement of Points on (District Court).....	129
Attorneys of Record, Names and Addresses of	1
Bond on Appeal.....	126
Certificate of Clerk to Transcript of Record.....	138
Complaint	2
Conclusions of Law.....	95
Decree	105
Designation of Contents of Record by Appel- lant on Appeal (Circuit Court of Appeals).....	140

	Page
Designation of Contents of Record by Appellant on Appeal (District Court).....	135
Designation of Contents of Record by Appellee on Appeal (District Court).....	137
Findings of Fact and Conclusions of Law.....	54
Memorandum Opinion	39
Motion to Amend Complaint to Conform With the Evidence	49
Motion to Withdraw and to Strike.....	118
Affidavit of Ben Anderson.....	120
Names and Addresses of Attorneys of Record	1
Notice of Appeal.....	125
Opinion, Memorandum	39
Opinion, Supplemental Memorandum.....	114
Order Allowing Amendment to Complaint.....	53
Order Allowing Amendment of Complaint by Interlineation	37
Order Denying Motion for New Trial, etc.....	122
Order Dismissing as to Certain Defendants.....	51
Petition for New Trial.....	112
Statement of Points Upon Which Appellant Intends to Rely (Circuit Court of Appeals)	140
Statement of Points Upon Which Appellant Intends to Rely (District Court).....	129
Supplemental Memorandum Opinion.....	114
Waiver of Damages and Remittitur.....	121

	Page
Proceedings in U. S. C. C. A., Ninth Circuit	145
Order of submission	145
Order directing filing of opinion and decree	145
Opinion, Haney, J.	146
Decree	154
Order denying petition for rehearing	155
Order staying issuance of mandate	156
Clerk's certificate	157
Order allowing certiorari	158

**NAMES AND ADDRESSES OF THE
ATTORNEYS OF RECORD:**

BEN ANDERSON,
Guardian Building,
Portland, Oregon,
for Appellants.

**JAY BOWERMAN and
C. W. PECORE,**
Yeon Building,
Portland, Oregon,
for Appellee.

In the District Court of the United States for the
District of Oregon.

March Term, 1939.

Be it remembered, That on the 4th day of May,
1939, there was duly filed in the District Court of
the United States for the District of Oregon, a
Complaint, in words and figures as follows, to wit:

[1*]

In the District Court of the United States for the
District of Oregon.

No. Civ. 126

COLUMBIA RIVER PACKERS ASSOCIA-
TION, INC., a corporation,

Plaintiff,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B.
BRANDT, CHAS. J. MACKIE, GLENN
MURDICK, FERDINAND SANDNESS,
P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O.
TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA,
JACK ANSAMA, J. W. BEECROFT,
HENRY BOYE, WILLIS KOOGLER, LEO
LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ,
W. A. PYRTZ, ANDY TOPPI, CHARLES
PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHER-
MEN'S UNION, its officers and members,
JOHN DOE No. 1, JOHN DOE No. 2, JOHN
DOE No. 3, JOHN DOE No. 4, JOHN DOE
No. 5, JOHN DOE No. 6, JOHN DOE No. 7,
JOHN DOE No. 8, JOHN DOE No. 9, JOHN
DOE No. 10, JOHN DOE No. 11, JOHN DOE
No. 12, RICHARD ROE No. 1, RICHARD

ROE No. 2, RICHARD ROE No. 3, RICHARD ROE No. 4, RICHARD ROE No. 5, RICHARD ROE No. 6, RICHARD ROE No. 7, RICHARD ROE No. 8, RICHARD ROE No. 9, RICHARD ROE No. 10, RICHARD ROE No. 11, RICHARD ROE No. 12, PETER ROE No. 1, PETER ROE No. 2, PETER ROE No. 3, PETER ROE No. 4, PETER ROE No. 5 and PETER ROE No. 6,

Defendants.

COMPLAINT.

The plaintiff for its cause of action and suit against the defendants complains and alleges as follows:

1.

That the plaintiff is a corporation duly and legally organized, incorporated, and doing business under and by virtue of the laws of the State of Oregon, having its principal office and place of business at Astoria, in said state, and under the authority of its articles of incorporation, charter and by-laws is engaged in catching, purchasing, processing, canning, merchandising and distributing fish and other products of the Pacific Ocean and its [2] tributaries, and in said connection acquires, transports, processes, cans, sells, disposes of, and distributes marine products caught and acquired from the Pacific Ocean and its tributaries in the markets of the United States and the states there-

of, and in various foreign countries including England, Australia, Germany and other countries.

II.

That in carrying on its said business it purchases fish and other products of the Pacific Ocean and its tributaries from various and sundry independent contractors, who capture, and acquire the same, and transport the same within and without the State of Oregon, and dispose of the same to the plaintiff.

That said independent contractors are fishermen, and in the operation of their several businesses of fishing for the purpose of capturing and acquiring fish and other marine products own, or under leases control boats, nets, and other fishing gear and appliances severally, and individually, of a value ranging from \$2500.00 to \$15,000, and said individual fishermen not only own, or under lease control their fishing equipment, but largely employ the labor of others to assist them in carrying on their fishing operations.

Said fishermen are directly employed by no one, but are independent contractors, who fish when and where they choose, and dispose of their fish to whomsoever they select.

That in each area of the states of Oregon, Washington and the territory of Alaska, adjacent to which fish and other marine products of the Pacific Ocean and its tributaries are captured, there is an established market price for the various products,

and there are a number of established purchasers, such as the plaintiff, who purchase from said fishermen their various products, paying therefor the established market price. [3]

III.

That in carrying on its said business it has been and is the practice of the plaintiff, along with other dealers to purchase fish and other products of the Pacific Ocean and its tributaries, which have been caught, captured and reduced to possession and ownership by various and sundry persons, all of which fish, and other marine products, have been caught, captured and reduced to possession and ownership by fishermen either on the Pacific Ocean within and without the territorial jurisdiction of the States of Oregon and Washington, and/or upon navigable streams thereof, which said fish and other marine products have been transported from the point of capture to land docks, wharves and other receiving instrumentalities, on or in the vicinity of land for sale and delivery to the plaintiff and other dealers and processors, and thereby the plaintiff has been engaged in commerce between the several states and territories of the United States.

IV.

That in transacting its business, the plaintiff owns and operates two large ocean-going steamships, and a large number of smaller ocean-going

tenders, and other marine facilities, and also operates plants, factories and processing institutions in said territory of Alaska, and the states of Oregon and Washington, at which it purchases, processes, cans and places in condition for sale and distribution its products in the various states and territories of the United States, and the plaintiff sells, and for many years last past has sold and distributed its products in the states and territories of the United States and in England and continental Europe and Australia.

V.

That for more than fifty years last past the plaintiff and its predecessor corporation in its business, has caught and purchased marine products taken and acquired from the Pacific Ocean [4] and its tributaries, which it, and its predecessor have processed, canned and otherwise placed in condition for sale and disposal in interstate commerce, and in carrying on its said business it has been and is the necessary practice of the plaintiff to contract in advance for the sale of its products in interstate commerce, and in said connection has, and immediately prior to the filing of this complaint had entered into contracts for the sale and disposal of shad, shad roe, salmon and other products of the Pacific Ocean and tributaries and waters adjacent to the states of Washington and Oregon, and lying within and without the territorial limits thereof. That said contracts were entered into in anticipa-

tion of a free, open market for the purchase of the raw material from fishermen engaged in fishing in said waters.

VI.

That certain of the defendants, and many other persons heretofore organized a trade association or organization known as "The Pacific Coast Fishermen's Union" of which the defendant H. B. Hinton is President and George Bambrick is secretary: the said H. B. Hinton is a resident and inhabitant of the State of Washington, domiciled and residing at Aberdeen in said state; the said George Bambrick is a resident and inhabitant of the State of Oregon, having his domicile at Astoria, Oregon. The defendant Leroy Chenoweth is also a member of said trade organization and is a resident and inhabitant of the state of Oregon, having his domicile at Reedsport, Oregon, and is the secretary of the local branch of said trade, organization located at Reedsport, which local branch is known and designated as "The Umpqua Local of the Pacific Coast Fishermen's Union".

That the defendants J. B. Brandt, Chas. J. Mackie, Glenn Murdock and Ferdinand Sandness are residents and inhabitants of the state of Oregon, having their domicils at Astoria, and said last four named, together with said George Bambrick and the said H. B. [5] Hinton are members of the governing body of said trade organization which controls its activities and actions.

The defendant P. J. Barton is a resident of the state of Oregon, having his domicil at Tillamook.

The defendant Jack Curtis is a resident and inhabitant of the State of Oregon, having his domicil at Astoria.

The defendants Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Sholtens, Roy Reavis and Arthur Hertel are residents and inhabitants of the state of Oregon and domiciled at Reedsport.

The defendants Charles Marks and Clyde Chase are residents and inhabitants of the state of Oregon, the defendant Marks having his domicil at Gardner, and the defendant Chase having his domicil at Reedsport.

That the defendants John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, John Doe No. 5, John Doe No. 6, John Doe No. 7, John Doe No. 8, John Doe No. 9, John Doe No. 10, John Doe No. 11, John Doe No. 12, Richard Roe No. 1, Richard Roe No. 2, Richard Roe No. 3, Richard Roe No. 4, Richard Roe No. 5, Richard Roe No. 6, Richard Roe No. 7, Richard Roe No. 8, Richard Roe No. 9, Richard Roe No. 10, Richard Roe No. 11, Richard Roe No. 12, Peter Roe No. 1, Peter Roe No. 2, Peter Roe No. 3, Peter Roe No. 4, Peter Roe No. 5 and Peter Roe No. 6, whose true names are unknown to the plaintiff are residents and inhabitants of the states of Oregon and Washington domiciled at various places therein, but the domicils

of said defendants in said states are unknown to the plaintiff.

VII.

That said organization is composed of several hundred other persons who are residents and inhabitants and have their domicils in the territory of Alaska, and the states of Oregon and Washington.

[6]

A large number of said members are aliens, and under the laws of the states of Washington and Oregon are not permitted to fish within the territorial jurisdictions of said states, but said aliens conduct their fishing operations in the Pacific Ocean beyond the territorial limits of said states, and after capturing fish in said ocean bring the same to the markets in the adjacent land areas. In its membership of said trade organization are a number of fishermen conducting a fishing business in navigable bays, rivers and other streams in the states of Oregon and Washington which are tributary to the Pacific Ocean, which said fishermen own, or lease the boats they operate, and own the nets and other gear used in their operations, but each thereof operates his business according to his own desires uncontrolled by the plaintiff, or anyone else, save and except the domination and control of said trade organization hereinafter more particularly set forth.

VIII.

That the navigable waters of the Umpqua River and its tributary Smith River are one of the prin-

principal sources of supply of shad, and said shad is available in said navigable waters for a period of approximately sixty days, part of April, May and early part of June.

That from said shad fish a valuable product known as "shad roe" is taken, which the plaintiff and other processors dispose of either in the fresh market, or by processing and canning the same, and the plaintiff now has, and for many years last past has had a large and valuable business in processing, canning, selling and disposing of canned shad, as well as canned shad roe; and in anticipation of the business in the usual course, as it had heretofore been transacted, the plaintiff has contracted to sell a large amount of said canned shad and canned shad roe, which product the plaintiff anticipated would be produced from shad captured in the navigable waters of [7] said Umpqua River and Smith River.

IX.

That under the laws of the state of Oregon the season for commercial fishing in said waters opened on April 20 and salmon, shad and other commercial fish were in said waters in commercial quantities at said time. That said waters are not only the principal source of supply of shad for the plaintiff's said operations, but also a substantial source of supply of salmon and other marine products.

X.

That in anticipation of its carrying on its business as it had heretofore done, the plaintiff leased

from the port authorities certain dock facilities and constructed thereon a cold storage plant and other facilities for the reception of, purchasing, storing and handling of said fish products, and also erected thereon net racks, tanning tanks, and adjacent thereto a mooring place for the convenience and accommodation of the fishermen selling their products to the plaintiff.

That the plaintiff also placed said operations in charge of competent men and prepared to carry on the fish dealing operations at Reedsport as it has heretofore done.

XI.

That on and immediately following April 20, 1939, a large number of fishermen began fishing in said waters and captured a substantial amount of fish and sold the same to the plaintiff at the regularly established market price, and said fishermen continued said operations until to and including Saturday, April 29, 1939, and continued to sell said fish to the plaintiff to and including said date, when the defendants, as is hereinafter more particularly set forth, caused all fishermen fishing in said waters to cease selling any fish to the plaintiff.

[8]

XII.

That prior to said date the defendants demanded of the plaintiff that it enter into a contract with said trade organization wherein and whereby the plaintiff would purchase no fish in said area from

anyone not a member of said trade organization. That all of the fishermen fishing in said waters are members of said trade organization, but the plaintiff being advised that its execution of said contract would constitute a violation of the laws of the United States of America, as well as of the State of Oregon, Declined and refused to sign the same; whereupon, the defendants H. B. Hinton, Bambrick, Brandt, Mackie, Murdock and Sandness, acting as the controlling authority of said trade organization, and by and through the defendants Barton and Curtis, through threats, intimidation and coercion induced the fishermen fishing in said waters to decline, and refuse to sell to the plaintiff any fish caught in said waters, and thereby said defendants effectively prevented the plaintiff from buying any fish caught in said waters.

That until said action of said defendants, the said plaintiff had been able to purchase and acquire its full requirements of fish from said waters from fishermen who were ready, able and willing to sell their fish to the plaintiff, and who would sell their said fish to the plaintiff except for the intimidation, coercion and threats of the said defendants.

That in carrying out their said unlawful purpose the said defendants threatened said fishermen with physical violence and with expulsion from said trade organization, and with preventing their carrying on their fishing operations by force and arms, and the destruction of their business, and that said fisher-

men dealing with plaintiff as aforesaid will be prevented from carrying on the business of fishing or marketing the same. [9]

XIII.

That at least five of said fishermen, who, during the current fishing season have been and were, up to April 29, selling their fish to the plaintiff, are using powered boats belonging to the plaintiff, leased to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said areas to the plaintiff, the plaintiff agreeing to pay the full going market price for said fish. That said fishermen are without financial responsibility and the plaintiff would be unable to collect any judgment for damages which it might recover against said fishermen, and the plaintiff is without relief unless said fishermen are permitted to continue to fish and sell their products to the plaintiff at the going, market price.

That said market price for fish in said area is established by said trade organization in agreement with the various dealers, including the plaintiff, who purchase fish in said area, and as aforesaid, there was no disagreement between the plaintiff and the fishermen selling fish to the plaintiff over the price thereof, or over any other matter entering into the business between said plaintiff and said fishermen, and except for the interference by the defendants with business relations between said plaintiff and said fishermen, said fishermen would have

continued to catch fish and sell and deliver same to plaintiff.

XIV.

That the defendants through collaborating, co-operating and conspiring have entered into a plan and scheme, the purpose of which is to completely control not only the catching of all fish in the Pacific Ocean adjacent to the states of Oregon and Washington, and the territory of Alaska, and in the bays and streams tributary thereto, but also to control the marketing and price of all said fish products, and in carrying said plan and scheme into effect have persuaded, induced and in some instances coerced fishermen of [10] said states and territories to join said organization under the agreement that said members of said trade organization will not sell their fish to any dealer, or other person who does not enter into an agreement not to purchase fish from any person not a member of said trade organization.

XV.

That in carrying said plan and scheme into effect the said defendants, and other members of said organization, cooperating and conspiring with the defendants have already notified the plaintiff that unless it enters into contracts with said trade organization whereby the plaintiff will agree to purchase no fish from any person not a member of said trade organization, which contracts demanded, as aforesaid, are for areas within said states of Washington and Oregon, that the Plaintiff will not be

permitted to purchase any fish or other marine products from any member of said organization, which in effect would mean that the plaintiff would not be permitted to purchase any fish as said organization has already made contracts with practically all operating fishermen in said areas.

That the contract demanded of the defendant for said Umpqua and Smith river areas contained said provision, and the plaintiff offered, to agree to said contract provided said exclusive feature was removed therefrom, but the said trade organization declined and refused to enter into any contract which did not require the plaintiff to purchase its fish in said area exclusively from members of said organization, and, as aforesaid, is demanding similar contracts from other fishing areas in said states, and unless restrained by order of this court will effectively prevent the plaintiff from procuring its requirements from fishermen ready, able and willing to sell their products to the plaintiff except when coerced not to deal with plaintiff through the unlawful actions of said trade organization, acting by and through the defendants herein. [11]

XVI.

That unless the defendants are restrained from their unlawful interference with commerce, as herein set forth, the season for the recovery of shad, salmon and other fish will have passed for the year 1939, not only in said Umpqua and Smith river areas, but in other areas in said two states,

to the plaintiff's great and irreparable injury and damage.

That if a restraining order is granted, no damage will ensue to the defendants, nor to any fisherman, whereas if a restraining order is not granted, the plaintiff will suffer a daily damage (excluding Sundays) continuing throughout the 1939 fishing season, in the aggregate amount of \$20,000, and unless restrained by an order of this court the defendants will continue their said unlawful conduct, and cause the plaintiff to suffer said damage.

XVII.

That the defendants, and the other persons belonging to said Pacific Coast Fishermen's Union, constitute a large percentage and more than a majority of persons engaged in capturing fish in the Pacific Ocean and its tributaries, and selling the same to dealers in said states, and also produce a large percentage, and more than half of said fish captured in said ocean adjacent to said states, and a very substantial portion of the fish captured in the waters tributary to said ocean, and are seeking to gain absolute control of said industry in said area, and are also seeking to gain the complete control of and dominion over the marketing and processing of said fish, and thereby create a monopoly of said industry in said areas.

XVIII.

That as aforesaid the open, legal fishing season in said Umpqua and Smith river areas commenced

on April 20, and the fishing in other major streams flowing into said ocean commenced on May 1. That the large run of fish in said Umpqua and Smith river area is [12] now in progress, and unless the plaintiff is granted immediate relief by an injunction of this court, preventing the defendants from further continuing their unlawful conspiracy to monopolize said fishing industry that it will lose its opportunity to acquire the fish necessary to carry out its contractual obligations.

XIX.

That the defendants who are members of said trade organization are endeavoring to coerce all of the packing plants and other dealers purchasing fish from the waters of the Pacific Ocean, adjacent to said states of Oregon and Washington, into signing an agreement whereby they would agree not to purchase fish from any person not a member of said trades organization, and unless enjoined and restrained by an order of this court they will accomplish said purpose and thereby secure a complete monopoly of, and control over catching, selling, dealing in, and processing of fish, and other marine products taken from the Pacific Ocean and its tributaries in and adjacent to said states.

Wherefore, the Plaintiff prays:

- (1) That a temporary restraining order and preliminary injunction may be issued out of this court upon its order directing the defendants, and each of them, and their agents, servants and employees, from in any manner interfering with the plaintiff

in the purchase, acquisition, processing, control and disposal of fish and other marine products, and that after a trial of this cause that said injunction may be made perpetual;

(2) For a decree of this court that the contracts between said Pacific Coast Fishermen's Union, and its members, which tend to create a monopoly of the fishing industry in the states of Oregon and Washington, and Alaska are void, and that all contracts entered into between said Pacific Coast Fishermen's Union, and its members, whereby processors and dealers in said marine products have agreed not to purchase fish and other marine products from persons not members of said [13] organization are void;

(3) For a decree ascertaining the damages suffered by plaintiff by reason of the unlawful acts of the defendants herein complained of, and awarding judgment in favor of the plaintiff and against the defendants, and each of them, for thrice the amount of said damages;

(4) And for such other and further order as to the court may seem meet and equitable in the premises.

JAY BOWERMAN

Attorney for Plaintiff

[Verification.]

[Endorsed]: Filed May 4, 1939. [14]

And afterwards, to wit, on the 22nd day of May, 1939, there was duly filed in said Court, an Answer in words and figures as follows, to wit: [15]

[Title of District Court and Cause.]

ANSWER

Comes now defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholten, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Philips, Carl Pyrtz, W. A. Pyrtz, [16] Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, and for their answer to Plaintiff's complaint, admit, deny and allege as follows:

I.

Admit the allegations contained in Paragraph I of said complaint.

II.

Defendants deny Paragraph II of said complaint except to admit Plaintiff's purchase of fish and other products of the Pacific Ocean and its tributaries from various persons engaged in capturing such products and that there are a number of other established purchasers such as plaintiff who obtain various products from said fishermen.

III.

Defendants admit Paragraph III of said complaint except that defendants deny that plaintiff is thereby engaged in commerce between the several states and territories of the United States.

IV.

Defendants admit Paragraph IV of said complaint.

V.

Answering Paragraph V of said complaint defendants do not have sufficient information with respect thereto to form a belief and therefore deny the same.

VI.

Defendants admit Paragraph VI of said Complaint.

VII.

Answering Paragraph VII of said complaint, defendants admit that said organization is composed of several hundred other persons who are residents and inhabitants and have their domicils in the Territory of Alaska and the States [17] of Oregon and Washington, and that some of said persons own or lease the boats they operate, and own or lease certain gear used in their operations, but defendants deny each and every other allegation contained in said paragraph and allege that many of such persons engaged in fishing do not own any boats or gear and that many of said persons operate

boats and gear either owned directly or indirectly by plaintiff, and that plaintiff exercises control over such equipment.

VIII.

Answering Paragraph VIII of said complaint defendants do not have sufficient information to form a belief with respect thereto and therefore deny the same.

IX.

Defendants admit Paragraphs IX and X of said complaint.

X.

Defendants deny all the allegations contained in Paragraphs XI and XII of said complaint.

XI.

Answering Paragraphs XIII of said complaint, defendants admit that at least five of said fishermen during the current fishing season have been and were selling their fish to plaintiff, or using powered boats belonging to plaintiff, but defendants deny each and every other allegation contained in said complaint.

XII.

Defendants deny all of the allegations contained in Paragraphs XIV, XV, XVI, XVII, XVIII and XIX of said complaint, and particularly deny that plaintiff will suffer daily damage in the sum of \$20,000 or any other sum.

And for their first further and separate answer [18] and defense defendants allege:

That each of defendants named in the within named cause except Charles Marks and Clyde Chase are members of the Pacific Coast Fishermen's Union; that the said Pacific Coast Fishermen's Union, hereinafter referred to as the PCFU, is a labor union chartered by the International Fishermen and Allied Workers of America; that said International Fishermen and Allied Workers of America is a labor organization exercising jurisdiction over its members engaged in the fishing and allied industry throughout America, and is affiliated with the Congress for Industrial Organizations; that the PCFU maintains its general headquarters at Astoria, Oregon, and charts numerous organizations of laboring people engaged in fishing and allied trades along the Pacific Coast; that these various local unions so chartered are composed of persons engaged in capturing fish in the Pacific Ocean and in the streams emptying into said Pacific Ocean, except the Columbia River; that said local unions so chartered maintain offices in various cities and towns of Oregon, and particularly in Astoria, Reedsport, Westport, Depoe Bay, Coquille, Tillamook and others.

II.

That a majority of all persons engaged in catching fish in the Pacific Ocean off the State of Oregon and in the various Oregon streams, except the Columbia River, are members of the PCFU and have bargained collectively through the PCFU with plaintiff for a number of years past; that some of

the persons engaged in taking fish as aforesaid, own their own boats and other equipment, a large number of persons so engaged are furnished equipment by [19] plaintiff through contract or mortgage arrangements which require them to deliver their catch to plaintiff.

III.

That about one-third of the persons engaged in fishing within said area do not own any equipment whatsoever and have nothing to offer except their labor, and are paid upon a "lay" basis or by receiving a fixed percentage of the catch.

IV.

That the PCFU was organized in the year 1932 A. D., and has ever since that time functioned as the collective bargaining agency for those engaged in catching fish within said area; that during said period the PCFU has entered into contractual relationship with plaintiff and other packers covering compensation and conditions under which the members of the PCFU shall labor; one of said terms of such contracts provides in substance that the members of the PCFU shall not be required to work with or alongside of non-union fishermen; that the Constitution and By-laws of the PCFU provide in substance that the PCFU shall seek to establish contracts in behalf of its members with the buyers and packers, and further provides that the members of the PCFU shall not sell their products outside of these contracts.

V.

That the nature of the fishing industry is such that it is necessary for the protection of persons engaged in the fishing industry, and necessary in the interest of the preservation of food fish that contractual relationships be established prior to the taking of fish and other marine products due to the fact that the measure of the fishermen's compensation for their labor depends upon the price obtain- [20] able, and due, further, to the fact that it is unlawful within the limits of the State of Oregon to waste salmon or other food fish.

VI.

That at the time when said contracts are negotiated and entered into, the subject matter of the contract, "food fish", has not been reduced to the status of property in that such contracts are made prior to the catching of said marine products and while said products belong to the State insofar as they can be property of anyone; that the catching and delivering of fish and other marine products mentioned in plaintiff's complaint is purely a local function in which all transactions occur within the boundaries of a particular state, and that defendants are not now nor have they been engaged in any interstate or foreign commerce in connection with their fishing operations.

VII.

That during the month of April 1939 the PCFU had entered into negotiations with plaintiff for the

purposes of reaching an agreement with respect to the compensation and working conditions under which the members of the PCFU should labor during the forthcoming season; that such negotiations were not fruitful in that no agreement was reached between plaintiff and the PCFU with respect to the conditions under which the fishermen, members of the PCFU, should be required to labor.

VIII.

That at no time during the time mentioned in plaintiff's complaint have the defendants nor other members of the PCFU, or its officers, threatened, coerced nor intimidated any person whatsoever engaged in the fishing indus- [21] try within the area described in plaintiff's complaint or elsewhere, and have committed no unlawful acts complained of in plaintiff's complaint.

IX.

That the within named cause involves a labor dispute; that the persons of the union against whom relief is sought, is engaged in the same industry, trade, craft and occupation in which such dispute occurs, and have a direct interest therein; that a number of the defendants are officers and agents of the PCFU, having a direct interest in said industry.

X.

That the defendants are organized in conformity with the United States Statute providing for the

organization of fishermen and are organized for the purpose of collective bargaining as contemplated by the statute, "United States Code Annotated, Title 15, p. 521 and 522; that plaintiff has a full and complete remedy at law under said statute, if indeed it is entitled to any remedy.

XI.

That plaintiff and other packers and dealers of fish and other marine products have been and now are organized into an association called The Commercial Fisheries Association; the names of the companies and individuals who are members of this association among others are as follows:

Columbia River Packers Assn.

New England Fish Co.

Point Adams Packing Co.

Nehalem Bay Fish Co.

Sunset Fish Co.

Tillamook Bay Fish Co.

Gage Fish Co.

Newmans Market

H. Jones Fish Co.

Art Ramsay

L. Hespeck

Yaquina Bay Fish Co.

E. J. Oakland

Chas. Marks

Justrom & Peterson

Chas. Feller [22]

that Chas. Feller is the president of said organization and one of the dealer members thereof; that said commercial Fisheries Association has throughout its existence bargained with the Pacific Coast Fishermen's Union, and has been and now is the collective bargaining agency for the packers and dealers; that the plaintiff, Columbia River Packers Association, is the largest operator in the field and seeks to impose its demands upon the members of the Pacific Coast Fishermen's Union without meeting the ordinary terms growing out of collective bargaining.

XII.

That during all times mentioned in plaintiff's complaint the members of the PCFU have continued to carry out their labor in the catching of fish and other marine products and delivering the same to persons with whom it has contractual relationships; that the members of the PCFU are ready and willing to bargain and to catch and deliver fish to plaintiff upon precisely the same terms that they are now catching and delivering fish and other marine products to the competitors of plaintiff.

XIII.

That on numerous occasions since April 20, 1939 plaintiff has intimidated, coerced and attempted to force a number of the defendants and other members of the PCFU by threats of discharge and threats of litigation to deliver fish and other marine

products to plaintiff upon terms and conditions more favorable to plaintiff than to its competitors; that during said time plaintiff had threatened said defendants that plaintiff would take away the fishing outfits from them unless they caught and delivered their fish to plaintiff, [23]

XIV.

That the PCFU keeps its charter open and will admit to its membership any and all persons engaged in the catching of fish and other marine products so long as such persons are of good moral character and bona fide workmen; that the PCFU does not intimidate or coerce any of its members in any respect but permits them to withdraw from said organization at their pleasure so that they may bargain individually or collectively with such other group as they may deem to be their best interest.

And for a second further and separate answer and defense defendants plead as follows:

I.

That the Court does not have jurisdiction to grant the injunctive relief prayed for in plaintiff's complaint.

II.

That plaintiff's complaint fails to state a claim upon which the relief is prayed for in subparagraph (3) of plaintiff's prayer.

Wherefore defendants, having fully answered plaintiff's complaint, pray for a decree of the above named Court as follows:

(1) That the temporary restraining order heretofore issued by the above named Court be dissolved.

(2) That plaintiff's complaint be dismissed with prejudice.

(3) That defendants be recompensed for the loss, expense, and damage, including all reasonable costs together with the reasonable attorney's fee and expenses incurred in the defense against the granting of the injunctive relief sought in this proceeding. [24]

(4) And for such other and further relief as may to the Court seem equitable in the premises.

BEN ANDERSON

Attorney for Defendants

[Verification.] [25]

Due and legal service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 22nd day of May, 1939.

JAY BOWERMAN (JHH)

Of Attorneys for Plaintiff

[Endorsed]: Filed May 22, 1939. [26]

And afterwards, to wit, on the 22nd day of May, 1939, there was duly filed in said Court, an Answer of Charles Marks and Clyde Chase, in words and figures as follows, to wit: [27]

[Title of District Court and Cause.]

ANSWER OF CHARLES MARKS
AND CLYDE CHASE

Comes now defendants Chas. Marks and Clyde Chase, and for their answer to plaintiff's complaint, admit, deny and allege as follows:

I.

Admit the allegations contained in Paragraph I of said complaint. [28]

II.

Defendants deny Paragraph II of said complaint except to admit Plaintiff's purchase of fish and other products of the Pacific Ocean and its tributaries from various persons engaged in capturing such products and that there are a number of other established purchasers such as plaintiff who obtain various products from said fishermen.

III.

Defendants admit Paragraph III of said complaint except that defendants deny that plaintiff is thereby engaged in commerce between the several states and territories of the United States.

IV.

Defendants admit Paragraph IV of said complaint.

V.

Answering Paragraph V of said complaint defendants do not have sufficient information with

respect thereto to form a belief and therefore deny the same.

VI.

Defendants admit Paragraph VI of said complaint.

VII.

Answering Paragraph VII of said complaint, defendants admit that said organization is composed of several hundred other persons who are residents and inhabitants and have their domiciles in the Territory of Alaska and the States of Oregon and Washington, and that some of said persons own or lease the boats they operate, and own or lease certain gear used in their operations, but defendants deny each and every other allegation contained in said paragraph and allege that many of such persons engaged in fishing do not own any boats or gear and that many of said persons operate boats and gear either owned directly or indirectly by plain- [29] tiff, and that plaintiff exercises control over such equipment.

VIII.

Answering paragraph VIII of said complaint defendants do not have sufficient information with respect thereto to form a belief and therefore deny the same.

IX.

Defendants admit Paragraphs IX and X of said complaint.

X.

Defendants deny all the allegations contained in Paragraphs XI and XII of said complaint.

XI.

Answering Paragraph XIII of said complaint, defendants admit that at least five of said fishermen during the current fishing season have been and were selling their fish to plaintiff, or using powered boats belonging to plaintiff, but defendants deny each and every other allegation contained in said complaint.

XII.

Defendants deny all of the allegations contained in Paragraphs XIV, XV, XVI, XVII, XVIII, and XIX of said complaint, and particularly deny that plaintiff will suffer daily damage in the sum of \$20,000 or any other sum.

And for a first further and separate answer and defense defendants plead as follows:

I.

That defendants, Charles Marks and Clyde Chase, at all times mentioned in plaintiff's complaint, and for some years past, have purchased marine products taken in the Umpqua River and the surrounding district; and that each of [30] said defendants own and operate receiving and processing plants at the mouth of the Umpqua River at Gardner and Reedsport respectively.

II.

That these answering defendants own and operate their separate fleets of fishing boats through an arrangement whereby members of the PCFU lease boats from these answering defendants and turn in their catch of marine products to defendants; that it has been the custom of the trade for many years past that where the buyer or processor furnishing boats as aforesaid, it is tacitly understood that such fishermen shall deliver their catch to the buyer or processor owning the boats.

III.

That defendants Chas. Marks and Clyde Chase operate independently of each other—that is, Chas. Marks conducting his operation at Gardner, Oregon, on the north side of the Umpqua River, and Clyde Chase conducting his operation at Reedsport, Oregon, on the south side of the Umpqua River.

IV.

That each of these answering defendants has signed certain documents with the PCFU providing that the members of the PCFU shall deliver fish and other marine products to these defendants; said document providing further that the members of the PCFU shall not be required to work with or alongside of non-union members; said document further providing that in the event a court of competent jurisdiction should declare such a provision unlawful that the contract shall be void; that

the above described document has been signed by these defendants in separate documents embracing the separate operations; said documents also having been [31] signed by PCFU, but that these answering defendants do not have copies of said documents, and in view of the ordinary custom in the trade, these defendants do not know whether or not such contract is in force at the present time.

V.

That defendant Chas. Marks has been engaged in fishing and allied industry in the southwestern part of Oregon for a period of approximately fifty (50) years; that prior to the year 1934 A. D., there existed but little regulation of the fish industry in the above described area and in the geographical area embraced in plaintiff's complaint; that due to the lack of regulatory measures great waste of natural resources were incurred and frequent periods of depressed markets were experienced. These chaotic conditions resulting time and time again in losses, not only to those engaged in capturing fish, but also severe losses to those engaged in buying and processing these products.

VI.

That in the interest of the preservation of food fish it is necessary that fish boats, particularly those taking fish in the Pacific Ocean, be provided with ice and supplies prior to setting out to sea; that these defendants' facilities for servicing are limited so that it is impossible to guarantee to service and

ice any and every boat seeking such service; it is therefore necessary that these defendants limit their buying to the buying from individuals who are known to these defendants to be reliable, and to service such boats to the exclusion of others.

VII.

That it is to the best interest of those engaged in capturing of fish, those engaged in buying and processing [32] of fish, and to the public that the taking and processing of fish in the Pacific Ocean and its tributaries be regulated in a reasonable degree.

VIII.

These answering defendants allege that they have at no time coerced, intimidated or threatened any person whatsoever engaged in the fishing industry within the area described in plaintiff's complaint or elsewhere, and have committed no unlawful acts complained of in Plaintiff's complaint.

And for a second further and separate answer and defense these defendants plead as follows:

I.

That the Court does not have jurisdiction to grant the injunctive relief prayed for in plaintiff's complaint.

II.

That plaintiff's complaint fails to state a claim upon which the relief prayed for in sub-paragraph (3) of plaintiff's prayer could be granted.

Wherefore defendants having fully answered plaintiff's complaint, pray for a decree of the above named Court as follows:

(1) That the temporary restraining order heretofore issued by the above named Court be dissolved.

(2) That plaintiff's complaint be dismissed with prejudice.

(3) That these answering defendants be recompensed for the loss, expense, and damage, including all reasonable costs together with the reasonable attorney's fee and expenses incurred in the defense against the granting of the injunctive relief sought in this proceeding. [33]

(4) And for such other and further relief as may to the Court seem equitable in the premises.

BEN ANDERSON

Attorney for Defendants

[Verification.]

Due and legal service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon on this 22nd day of May, 1939.

JAY BOWERMAN

Attorney for Plaintiff

{Endorsed}: Filed May 22, 1939. [34]

And afterwards, to wit, on Monday, the 22nd day of May, 1939, the same being the 67th Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [35]

[Title of District Court and Cause.]

ORDER

Based on the motion of the plaintiff for leave to amend its bill of complaint by interlineation on the original complaint,

It is considered, ordered and decreed that said motion be, and the same is hereby allowed, and that said complaint be, and the same is hereby amended by interlineation as follows:

By adding a “,” and the word “California” after the word “Washington” in line 24; page 2; and by adding a “,” and the word “California” after the word “Oregon” in line 8, page 3.

By adding the words “and foreign” after the word “interstate” in line 3, page 4.

By adding the letter “s” to the word “state”, and a “,” and the word “California” after the word “Oregon” in the last line on page 5.

By adding an “s” to the word “state” in line 5, and substituting the letter “h” for the letter “y” in the last word in the last line of paragraph VII at its ending on page 6.

By inserting a “,” after the surname “Mackie” in line 11, page 8.

By striking out of line 25, page 8, the words "physical violence" and inserting in lieu thereof "fines and penalties"; and striking out in line 27 the words "by force and arms"; and by adding in line 29 after the word "aforesaid" the words "were and"; and by correcting the spelling of the word "marketing" in line 30 by striking out the letter "n". [36]

By adding in line 4, page 9, after the word "boats" the word "heretofore" and by striking out of line 5, page 9, the word "leased" and inserting therein the word "sold".

By inserting in line 4, page 10, after the word "fish" the words "or other marine products".

By striking out the word "with" in line 11, page 10, and inserting in lieu thereof the word "will"; and by inserting after the word "fish" in said line the words "or other marine products"; and by inserting in line 17, page 10, after the word "fish", the words "or other marine products".

By removing the word "is" where it first appears in line 8, page 11, and substituting in lieu thereof the word "if".

§ Dated May 22, 1939.

CLAUDE McCOLLLOCH

Judge

[Endorsed]: Filed May 22, 1939. [37]

And afterwards, to wit, on the 26th day of May, 1939, there was duly filed in said Court, a Memorandum Opinion, in words and figures as follows, to wit: [38]

[Title of District Court and Cause.]

MEMORANDUM OPINION

This is a proceeding under the Federal Anti-Trust Laws, which give an aggrieved private party the right to enjoin monopolistic practices. Treble damages are also claimed.

At this time I can only give a brief summary of the facts and the contentions of the parties.

Plaintiff has (or has had recently) receiving, packing, canning and processing plants and equipment, including floating equipment, in Oregon, Washington, California and Alaska. Plaintiff does no fishing itself. It cans and processes 60% of the pack of salmon and other marine products put up in Oregon. Since the appearance of albacore (tuna) off the Oregon Coast in recent years, plaintiff has prepared to pack that fish in commercial quantities. To that end, it has expended a large sum for additional plant and equipment at Astoria.

The defendant Union is an affiliate of the Congress of Industrial Organization. Its membership includes 90% of the commercial troll fishermen, fishing off shore in Oregon and Washington. The Union has a large additional membership among fishermen who fish in the rivers and bays of Oregon.

and Washington, not including, however, the Columbia River. Union counsel stated at the argument that the defendant did not now claim jurisdiction over California and Alaska waters, but the evidence showed that quite recently defendant had asserted jurisdiction over fishermen in California and Alaska. [39]

This controversy is over the requirement which defendant imposes on all packers and canners contracting with it, that those contracting will not buy fish from any one not a member of the defendant Union. The Union's constitution and by-laws obligate Union members not to sell fish to packers or canners not under contract with the Union. I believe the record indicates that all the packers and canners in Oregon, other than plaintiff, are under contract with defendant. I recall no exception.

Towards the end of the fishing season of 1938, certain fishermen, residents of the State of Washington, not members of the defendant Union, offered to sell their fish to plaintiff. Plaintiff's officials informed the Washington fishermen that plaintiff could not buy from them because of the said "exclusive clause" in the contract which plaintiff then had with the defendant Union, whereupon the Washington fishermen threatened plaintiff with criminal prosecution and civil suits under the Federal Anti-Trust Laws. Feeling that it had no alternative, plaintiff has begun this proceeding to have

determined the legality of the exclusive buying clause in defendant's contracts and the allied provisions in the Union's constitution and the practices based thereon.

Before beginning this suit, plaintiff offered to negotiate with defendant, in accordance with past practice, for a price to be paid on the season's catch, but refused to sign a contract containing the exclusive buying clause. Thereupon, defendant's members were notified by those in authority not to sell fish to plaintiff, and this litigation followed. Plaintiff cannot obtain the fish it needs to supply its customers, who are distributed throughout the United States and elsewhere, if it is limited to the catch of fishermen not members of defendant Union. Defendant charges that plaintiff's motive is to destroy the Union, particularly that plaintiff is seeking to obtain this season's and later catches of the recently discovered run of albacore off the Oregon coast at a lower price than it would have to [40] pay if under contract with defendant.

Norris-La Guardia Act

Defendant claims that this is a labor dispute, and that the terms of the Norris-La Guardia Act, which prohibits injunctions in labor disputes (except in cases involving fraud and violence) should apply. No fraud or violence is charged by plaintiff.

Plaintiff contends that the relation of employer-employee does not obtain between it and defendant's members, and for that reason denies the

application of the Norris-La Guardia Act. Plaintiff claims that defendant's members are free to fish as and when they please, and that it has no control over defendant's members or their operations in any of the usual respects which characterize the relation of employer and employee. Plaintiff's complaint characterizes the fishermen as "independent contractors". At the trial, plaintiff suggested that it was more apt to describe the fishermen as "merchants", a characterization used by Judge H. K. Zimmerman of the Oregon State Circuit Court in a case heard by him several years ago. The Union's brief refers to the Union as a "trade association".

Defendant Union relies also on the provisions of the Act of Congress of 1934, 15 U. S. C. A. #521,authorizing fishermen to market collectively. This Act contains a provision that the Secretary of Agriculture may order such collective organizations of fishermen to cease and desist any operations which, in the opinion of the Secretary, unduly restrain trade. The Act provides for injunctive proceedings by the Department of Justice, in the event that such orders by the Secretary are not observed. Defendant urges that this procedure is exclusive in any case where a monopolistic practice has sprung up.

Defendant also denies that the case presented involves interstate commerce. [41]

Opinion

I cannot feel that this is a labor dispute within the meaning of the Norris-La Guardia Act. Defendant calls attention to (a) of Section 13 of the Act, reading as follows:

“(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein,”

But (c) of the same Section must also be considered. It reads:

“(c) The term “labor dispute” includes any controversy concerning *terms or conditions of employment*, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange *terms or conditions of employment*, regardless of whether or not the disputants stand in the proximate relation of employer and employee.” (Italics are by the Court).

In my opinion ‘terms and conditions of employment’ within the meaning of the Act are not involved in this controversy.

Plaintiff refers to defendant as a “trade association”. I think defendant has more aptly described itself (in invoking the benefits of the Federal Fishermen’s Collective Market Act) as a cooperative association, and I think we are compelled to look to the law of cooperative marketing rather

than to labor law for the precedents controlling this case.

Defendant's members are producers, just as cattlemen, grain men, poultry raisers and orchardists, are producers. Could it be maintained that a cooperative association of any of the types of producers named, having substantial control of production, could require of all buyers that they agree not to buy from any other producers, and could forbid and prevent their members by fines and other disciplinary measures from selling to buyers who did not thus agree to buy only from cooperative members? Research by counsel during the week's trial and my own research has not disclosed so extreme a claim by any cooperative marketing association in the long history of cooperatives.

While the point was not pressed at the argument, I ask this question in behalf of the consuming public, whose interests are paramount in determining any question arising under the Anti-Trust Laws: In any year when defendant's members did not choose to fish, how would [42] the consuming public get its needs of salmon and other marine products? Since the Union's contract does not guarantee a supply of fish, where would the canneries get fish, having agreed to look to the Union for their sole supply? Surely reasonable men will agree that the public's interest in an important item of food supply should not be put in such jeopardy. If an exclusive and monopolistic arrangement can be legally made as to fish, it can be made as to milk, as to meat, as to all other necessities of life.

Defendant likens its claim to the closed shop in industry, but I cannot concede the analogy. The special and peculiar economic problems growing out of the relation of employer and employee in industry, which have caused sanction to be given by modern decisions and legislation to the closed shop in industry, where the true employer and employee relation obtains do not, in my opinion, furnish precedent for a monopoly in the capture and distribution of one of Nature's resources, the common bounty of all men.

Interstate Commerce

Plaintiff distributes its products widely throughout the United States, and since defendants' acts are directly intended, and will, if carried out, have the effect of denying plaintiff the needed raw material to carry on its business, I entertain no doubt that the Federal Anti-Trust Laws apply. The movements of fish to plaintiff's canneries, across State Lines and from territorial and international waters strengthen the conviction that here is a proper case for invocation of the Federal statutes.

The exclusive buying clause, which if accepted, would forbid plaintiff from buying fish from others than members of the defendant Union, and which would forbid Union members from selling to others than those so contracting with the Union is, in my opinion, clearly in restraint of trade and void as against public policy, and plaintiff is entitled to injunctive relief.

I will be glad to meet with the attorneys at an early convenient date to discuss Findings of Fact, Conclusions of Law, and appropriate form of Decree. It may well be that the Decree should, as to certain matters, be declaratory in form. If this is found [43] advisable, the necessary amendments may be made to the pleadings.

Time permitting, I will endeavor at a later date to enlarge this memorandum with citation of authorities and a fuller statement of the position of the parties and of the facts disclosed by the testimony. The temporary restraining order will be extended to and including Saturday, June 3rd, next, pending final settlement of the form of the Decree.

I desire to express my appreciation of the candor and reasonableness with which the case has been presented on both sides, and to say also that I deeply sympathize with the earnestness and zeal manifested by the leaders of the defendant Union for better prices for the fish caught by their members, as well as their great interest in conserving the food supply with which they deal.

Having organized the fishermen 90%, the defendant Union has a great power in its hands. Such great control over one of the necessities of life calls for reasonableness and moderation in the exercise of the power. I am certain that with so complete an organization, the fishermen will find that the powers granted by the Federal cooperative statutes are ample to protect their markets. More power

over their markets than exercised by the other producers of the Nation in the fields of agriculture, horticulture and meat production, the fishermen cannot expect and should not demand.

CLAUDE McCOLLOCH

Judge

Dated May 26, 1939.

[Endorsed]: Filed May 26, 1939. [44]

And afterwards, to wit, on the 9th day of June, 1939, there was duly filed in said Court, a Motion to amend Complaint to conform to the Evidence, in words and figures as follows, to wit: [45]

[Title of District Court and Cause.]

MOTION

Comes now the plaintiff and moves the court for an order authorizing and permitting plaintiff to amend its complaint herein to conform to the evidence heretofore introduced in this cause without objection, as follows:

I.

By adding at the end of paragraph XVI of plaintiff's complaint:

"That on and between April 29, 1939, and May 24, 1939, both dates inclusive, due to the interference by the defendant, the Pacific Coast Fishermen's Union, and the defendants Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Leroy

Chenowith, Walter Weaver, Charles Marks and Clyde Chase, the fishermen fishing in the Umpqua and Smith Rivers, who theretofore had been delivering fish to plaintiff, and who would have continued to deliver fish to plaintiff, except for the unlawful interference by said defendants, refrained from making such deliveries, and that the plaintiff has suffered damages in the sum of Eleven Hundred Dollars (\$1100.00) by reason of said unlawful acts of said defendants."

II.

By adding to said complaint a paragraph numbered XXI as follows:

"That on and after the commencement of this suit on May [46] 4, 1939, and after the temporary restraining order issued by this court had been served, certain of the defendants fishing in said area sold fish to the plaintiff, and that said organization, and the above designated members thereof, to wit: Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Chenowith and Weaver have, since said sales were made, threatened, and now threaten unless restrained by decree of this court, to inflict penalties on said fishermen who are members of said organization, and who have during the pendency of this suit sold fish to the plaintiff; and that in open court on Saturday, June 3, 1939, Ben Anderson, the attorney for all of the defendants appearing herein, stated in open court that it was the intention of said defendants to discipline all such fishermen as had sold fish to the plaintiff."

III.

By adding to said complaint a paragraph numbered XXI as follows:

"After the commencement of this suit and the service of the complaint, summons and restraining order upon the defendants Glenn Murdock and Jack Curtis, they, together with two other officials of the defendant Pacific Coast Fishermen's Union, for the purpose of coercing and compelling plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union and its members containing the exclusive provisions hereinabove referred to, said defendants Glenn Murdock and Jack Curtis, together with said two other officials of the defendant Pacific Coast Fishermen's Union, [solicited and]* procured an agreement with other organizations and individuals theretofore having business relations with the plaintiff, and with whom the plaintiff intended and desired to continue business relations, and said defendants and said other officials [solicited and]* procured said other persons and organizations to agree that unless and until the plaintiff entered into an agreement with the defendant Pacific Coast Fishermen's Union, satisfactory to the defendant Pacific Coast Fisher- [47] men's Union, that they, the said other persons and organizations would boycott the plaintiff and refuse to have any business dealings with the plaintiff, it being the intention of said

*[Stricken by Order, June 14, 1939—see p. 53.]

defendants Glenn Murdock and Jack Curtis and said other officials of the defendant Pacific Coast Fishermen's Union thereby to coerce and compel the plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union containing said exclusive provisions whereby the plaintiff would be obligated to refrain from purchasing fish from any person not a member of said defendant Pacific Coast Fishermen's Union; and that said defendants and said other officials did procure said other persons and organizations to agree that unless and until a contract was entered into by the plaintiff to and with the defendant Pacific Coast Fishermen's Union, that the said other persons and organizations would refrain from having business relations with the plaintiff, and the defendant Pacific Coast Fishermen's Union then continued as it had theretofore done to insist that any contract between the plaintiff and the defendant Pacific Coast Fishermen's Union should contain said provisions excluding the plaintiff from purchasing fish from anyone not a member of the defendant Pacific Coast Fishermen's Union."

JAY BOWERMAN

C. W. PECORE

Attorneys for Plaintiff

State of Oregon,
County of Multnomah—ss.

Due service of the within Motion by the delivery of a duly certified copy thereof as provided by

law, at Portland Oregon, on this .9th day of June, 1939, is hereby admitted.

BEN ANDERSON

Of Attorneys for Defendants

[Endorsed]: Filed June 9, 1939. [48]

And afterwards, to wit, on Monday, the 12th day of June, 1939, the same being the 83rd Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [49]

[Title of District Court and Cause.]

ORDER

Based upon the motion of Jay Bowerman and C. W. Pecore, Attorneys for Plaintiff, made in open court this 12th day of June, 1939, for an order dismissing this cause as to the defendants John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, John Doe No. 5, John Doe No. 6, John Doe No. 7, John Doe No. 8, John Doe No. 9, John Doe No. 10, John Doe No. 11, John Doe No. 12, Richard Roe No. 1, Richard Roe No. 2, Richard Roe No. 3, Richard Roe No. 4, Richard Roe No. 5, Richard Roe No. 6, Richard Roe No. 7, Richard Roe No. 8, Richard Roe No. 9, Richard Roe No. 10, Richard Roe No. 11, Richard Roe No. 12, Peter Roe No. 1, Peter Roe No. 2, Peter Roe No. 3, Peter Roe No. 4,

Peter Roe No. 5, Peter Roe No. 6, and it appearing to the Court from statements of counsel and from the records and files herein that none of said defendants have ever been served with Process in this Cause, and that neither the identity nor domicile of any of said defendants has been determined;

Now, therefore, it is ordered, adjudged and decreed that this Cause be and is hereby dismissed as to the defendants John Doe No. 1, John Doe No. 2, John Doe No. 3, John Doe No. 4, John Doe No. 5, John Doe No. 6, John Doe No. 7, John Doe No. 8, John Doe No. 9, John Doe No. 10, John Doe No. 11, John Doe No. 12, Richard Roe No. 1, Richard Roe No. 2, Richard Roe No. 3, Richard Roe No. 4, Richard Roe No. 5, Richard Roe No. 6, Richard Roe No. 7, Richard Roe No. 8, Richard Roe No. 9, Richard Roe No. 10, Richard Roe No. 11, Richard [50] Roe No. 12, Peter Roe No. 1, Peter Roe No. 2, Peter Roe No. 3, Peter Roe No. 4, Peter Roe No. 5, Peter Roe No. 6.

Dated June 12th, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed June 12, 1939. [51]

And afterwards, to wit, on Wednesday, the 14th day of June, 1939, the same being the 85th Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McCulloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [52]

[Title of District Court and Cause.]

ORDER

This cause coming on in open court this 14th day of June, 1939, on motion of plaintiff for leave to amend its complaint to conform to the evidence, oral argument having been heard, and the court now being fully advised:

It is considered and ordered that paragraph I of said motion pertaining to amendment at the end of paragraph XVI of the complaint be and the same is allowed.

That paragraph II of the motion pertaining to adding a paragraph numbered XXI is allowed.

That paragraph III of the motion is allowed except as follows: strike out the words, "solicited and" appearing in line 25 on page 2 of the motion, and strike out the words, "solicited and" appearing in line 29 on the said page.

CLAUDE MCCOLLOCH

Judge

[Endorsed]: Filed June 14, 1939. [53]

And afterwards, to wit, on the 14th day of June, 1939, there was duly filed in said Court, Findings of Fact and Conclusions of Law, in words and figures as follows, to wit: [54]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having heretofore come on regularly for trial before the Honorable Claude McColloch, a Judge of the above entitled Court, the plaintiff appeared by Jay Bowerman and C. W. Pecore, its attorneys; the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Kogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, Clyde Chase and Charles Marks, appeared by Ben Anderson, their Attorney; the Court having received and considered the evidence and heard the argument of counsel, and being fully [55] advised, makes the following

FINDINGS OF FACT

I.

That the plaintiff is a corporation duly and legally organized, incorporated, and doing business under

and by virtue of the laws of the State of Oregon, having its principal office and place of business at Astoria, in said state, and under the authority of its articles of incorporation, charter and by-laws is engaged in purchasing, processing, canning, merchandising and distributing fish and other products of the Pacific Ocean and its tributaries, and in said connection acquires, transports, processes, cans, sells, disposes of, and distributes marine products caught and acquired from the Pacific Ocean and its tributaries in the markets of the United States and the states thereof, and in various foreign countries including England, Australia, Germany and other countries.

II.

That in carrying on its said business it purchases fish and other products of the Pacific Ocean and its tributaries from various and sundry producers and independent contractors, who capture, and acquire the same, and transport the same within and without the State of Oregon, and dispose of the same to the plaintiff.

That said producers and independent contractors are fishermen, and in the operation of their several businesses of fishing for the purpose of capturing and acquiring fish and other marine products own, or under leases control boats, nets, and other fishing gear and appliances severally, and individually, of a value ranging from \$100.00 to \$15,000, and said individual fishermen not only own, or un-

der lease control their fishing equipment, but to a substantial extent employ the labor of others to assist them in carrying on their fishing operations.

Said fishermen are directly employed by no one, but are producers and independent contractors, who fish when and where they choose, and dispose of their fish to whomsoever they select, limited only by a voluntary agreement among themselves as members of the defendant, the Pacific Coast Fishermen's Union. [56]

That in each area of the states of Oregon, Washington, California and the territory of Alaska, adjacent to which fish and other marine products of the Pacific Ocean and its tributaries are captured there is an established market price for the various products, and there are a number of established purchasers, such as the plaintiff, who purchase from said fishermen, and other fishermen, their various products, paying therefor the established market price.

III.

That in carrying on its said business, it has been and is the practice of the plaintiff, along with other dealers to purchase fish and other products of the Pacific Ocean and its tributaries, which have been caught, captured and reduced to possession and ownership by various and sundry persons, all of which fish, and other marine products, have been caught, captured and reduced to possession and ownership by fishermen either on the Pacific Ocean within and without the territorial jurisdiction of

the States of Oregon, California and Washington, and/or upon navigable streams thereof, which said fish and other marine products have been transported from the point of capture to land docks, wharves and other receiving instrumentalities, on or in the vicinity of land for sale and delivery to the plaintiff and other dealers and processors, and thereby the plaintiff has been engaged in commerce between the several states and territories of the United States.

IV..

That in transacting its business, the plaintiff owns and operates two large ocean-going steamships, and a large number of smaller ocean-going tenders, and other marine facilities, and also operates two plants, factories and processing institutions in said territory of Alaska, and two each in the states of Oregon and Washington, at which it purchases, processes, cans and places in condition for sale and distribution its products in the various states and territories of the United States; and plaintiff also has receiving stations in the states of Oregon and Washington where it purchases [57] and receives fish and transports the same to its canning and processing plants in Washington and Oregon; and the plaintiff sells, and for many years last past has sold and distributed its products in the states and territories of the United States and in England and Continental Europe and Australia.

V.

That for more than fifty years last past the plaintiff and its predecessor corporation in its business, has caught and purchased marine products taken and acquired from the Pacific Ocean and its tributaries, which it, and its predecessor have processed, canned and otherwise placed in condition for sale and disposal in interstate and foreign commerce, and in carrying on its said business it, has been and is the necessary practice of the plaintiff to contract in advance for the sale of its products in interstate commerce, and in said connection has, and immediately prior to the filing of this complaint had entered into contracts for the sale and disposal of shad, shad roe, salmon and other products of the Pacific Ocean and tributaries and waters adjacent to the states of Washington and Oregon, and lying within and without the territorial limits thereof. That said contracts were entered into in anticipation of a free, open market for the purchase of the raw material from fishermen engaged in fishing in said waters.

VI.

That certain of the defendants, and many other persons heretofore organized an association or organization known as "The Pacific Coast Fishermen's Union" of which the defendant H. B. Hinton is president, and George Bambrick is secretary; the said H. B. Hinton is a resident and inhabitant of the State of Washington, domiciled and residing

at Aberdeen in said state; the said George Bambrick is a resident and inhabitant of the State of Oregon, having his domicile at Astoria, Oregon. The defendant Leroy Chenowith is also a member of said organization and is a resident and inhabitant of the state of Oregon, having his domicile at Reedsport, Oregon, and is the secretary of the local branch of said organization located at Reedsport, which local branch is known and designated as "The Umpqua Local of the Pacific Coast Fishermen's Union."

That the defendants J. B. Brandt, Chas. J. Mackie, Glenn [58] Murdock and Ferdinand Sandness are residents and inhabitants of the state of Oregon, having their domicils at Astoria, and said last four named, together with said George Bambrick, and the said H. B. Hinton, are members of the governing body of said organization which controls its activities and actions.

The defendant P. J. Barton is a resident of the state of Oregon, having his domicile at Tillamook.

The defendant Jack Curtis is a resident and inhabitant of the State of Oregon, having his domicile at Astoria.

The defendants Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis and Arthur Hertel are residents and inhabitants of the state of Oregon and domiciled at Reedsport.

The defendants Charles Marks and Clyde Chase are residents and inhabitants of the state of Oregon,

the defendant Marks having his domicile at Gardner, and the defendant Chase having his domicile at Reedsport.

VII.

That said organization is composed of several hundred other persons who are residents and inhabitants and have their domicils in the territory of Alaska, and the states of Oregon, California and Washington.

A number of said members are aliens, and under the laws of the states of Washington and Oregon are not permitted to fish within the territorial jurisdictions of said states. A large number of the members of said organization conduct their fishing operations in the Pacific Ocean beyond the territorial limits of said states, and after capturing fish in said ocean bring the same to the markets in the adjacent land areas. In its membership of said organization are a number of fishermen conducting a fishing business in navigable bays, rivers and other streams in the states of Oregon and Washington which are tributary to the Pacific Ocean, which fishermen, who fish in the Pacific Ocean and the adjacent waters, own, or lease the boats they operate, and own the nets and other gear used in their operations, but each thereof operates his business according to his own desires uncontrolled by the plaintiff, [59] or anyone else, save and except the domination and control of said organization herein-after more particularly set forth.

VIII.

That the navigable waters of the Umpqua River and its tributary Smith River are one of the principal sources of supply of shad, and said shad is available in said navigable waters for a period of approximately sixty days, part of April, May and a part of June of each year.

That from said shad fish a valuable product known as "shad roe" is taken, which the plaintiff and other processors dispose of either in the fresh market, or by processing and canning the same, and the plaintiff now has, and for many years last past has had a large and valuable business in processing, canning; selling and disposing of canned shad, as well as canned shad roe; and in anticipation of the business in the usual course, as it had heretofore been transacted, the plaintiff has contracted to sell a large amount of said canned shad and canned shad roe, which product the plaintiff anticipated would be produced from shad captured in the navigable waters of said Umpqua River and Smith River.

IX.

That under the laws of the State of Oregon the season for commercial fishing in said waters opened on April 20 and salmon, shad and other commercial fish were in said waters in commercial quantities at said time. That said waters are not only the principal source of supply of shad for the plaintiff's said operations, but also a substantial source of supply of salmon and other marine products.

X.

That in anticipation of its carrying on its business as it had heretofore done, the plaintiff leased from the port authorities certain dock facilities and constructed thereon a cold storage plant and other facilities for the reception of, purchasing, storing and handling of said fish products, and also erected thereon net racks, tanning tanks, and adjacent thereto a mooring place for the convenience and accommodation of the fishermen selling their products to the plaintiff. [60]

That the plaintiff also placed said operations in charge of competent men and prepared to carry on the fish dealing operations at Reedsport as it has heretofore done.

XI.

That on and immediately following April 20, 1939, a large number of fishermen began fishing in said waters and captured a substantial amount of fish and sold the same to the plaintiff at the regularly established market price, and said fishermen continued said operations until to and including Saturday, April 29, 1939, and continued to sell said fish to the plaintiff to and including said date, when the defendants, as is hereinafter more particularly set forth, caused all fishermen fishing in said waters to cease selling any fish to the plaintiff.

XII.

That prior to said date the defendants demanded of the plaintiff that it enter into a contract with

said organization wherein and whereby the plaintiff would purchase no fish in said area from anyone not a member of said organization. That all of the fishermen fishing in said waters are members of said organization, but the plaintiff being advised that its execution of said contract would constitute a violation of the laws of the United States of America, declined and refused to sign the same; whereupon, the defendants Bambrick, Brandt, Mackie, Murdock and Sandness, acting as the controlling authority of said organization, and by and through the defendants Barton and Curtis, through threats, intimidation and coercion induced the fishermen fishing in said waters to decline, and refuse to sell to the plaintiff any fish caught in said waters, and thereby said defendants effectively prevented the plaintiff from buying any fish caught in said waters.

That until said action of said defendants, the said plaintiff had been able to purchase and acquire its full requirements of fish from said waters from fishermen who were ready, able and willing to sell their fish to the plaintiff, and who would sell their said fish to the plaintiff except for the intimidation, coercion and threats of said defendants. [61]

That in carrying out their said unlawful purpose the said defendants threatened said fishermen with fines and penalties and with expulsion from said organization, and with preventing their carrying on their fishing operations, and the destruction

of their business, and that said fishermen dealing with plaintiff as aforesaid were and will be prevented from carrying on the business of fishing or marketing the same.

That the defendant, the Pacific Coast Fishermen's Union, and the other defendants who control its operations, included in which are the defendants Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Chenowith and Weaver, threatened the fishermen operating at Reedsport and on the Umpqua River and Smith River that said Pacific Coast Fishermen's Union would inflict fines and penalties upon such thereof as should sell fish to the plaintiff.

XIII.

The Court further finds that on and after the commencement of this suit on May 4, 1939, and after the temporary restraining order issued by this court had been served, certain of the defendants fishing in said area sold fish to the plaintiff, and that said organization, and the above designated members thereof, to wit: Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Chenowith and Weaver have, since said sales were made, threatened, and now threaten unless restrained by decree of this court, to inflict penalties on said fishermen who are members of said organization, and who have during the pendency of this suit sold fish to the plaintiff; and the court further finds that in open court on Saturday, June 3, 1939,

Ben Anderson, the attorney for all of the defendants appearing herein, stated in open court that it was the intention of said defendants to discipline all such fishermen as had sold fish to the plaintiff.

XIV.

That at least five of said fishermen, who, during the current fishing season have been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught [62] in said areas to the plaintiff until their purchase price is paid; the plaintiff agreeing to pay the full going market price for said fish.

Said purchasers had not paid for said boats, one sale had been consummated and a chattel mortgage had been taken, and the agreement under which said boats were sold required the purchasers to sell the fish they caught to the plaintiff until the purchase price had been paid; all purchasers had been fishing and selling their fish to the plaintiff until required to desist by the Pacific Coast Fishermen's Union and, its members, whereupon they ceased selling fish to the plaintiff, and have not sold fish to the plaintiff since.

That said market price for fish in said area was established by said organization in agreement with the various dealers, including the plaintiff, who purchase fish in said area, and as aforesaid, there

was no disagreement between the plaintiff and the fishermen selling fish to the plaintiff over the price thereof, or over any other matter entering into the business between said plaintiff and said fishermen; and except for the interference by the defendants with business relations between said plaintiff and said fishermen, said fishermen would have continued to catch fish and sell and deliver same to plaintiff.

XV.

The defendant, the Pacific Coast Fishermen's Union, was organized in 1932 and was made up originally of troll fishermen fishing in the international waters opposite the states of Oregon, Washington and California, and the territory of Alaska. Said troll fishing is carried on substantially as follows: Powered boats are used and the fish are caught with hooks and line; a supply of ice is taken aboard at the beginning of the voyage, and as the fish are caught they are suitably cared for, and dependent on conditions, the voyage lasts from three days to two weeks. The boat is manned by from one to three men, one of whom is usually, if not always, the owner of the boat, which, with its equipment, has a value of from \$100.00 to \$15,000. These boats are operated in all respects outside the control of the plaintiff, or any other fish processor, and solely under the control and [63] jurisdiction of the captain (owner of the boat). The voyage is concluded by returning to some fish re-

ceiving station selected by the captain of the boat, where the fish are sold and delivered at the going market price.

XVI.

The uniform interpretation and practice under the constitution, and by-laws of the Pacific Coast Fishermen's Union as the same appears by the evidence in this case is summarized as follows: The organization assumes jurisdiction over troll fishing in Alaska, trolling, gill-netting and crabbing along the coasts of British Columbia and Puget Sound, along the coasts of, and in the states of Washington, Oregon, and California, exclusive of the Columbia River and its tributaries; it has claimed to control 90% of the troll fishing in these areas and 100% control of all types of fishing in the Umpqua and Smith Rivers is undisputed, and therefore found to be a fact.

The jurisdiction of Pacific Coast Fishermen's Union as far South as Crescent City, California, was enforced in 1938 against the plaintiff to the extent where its boycott of the plaintiff was so efficient that the plaintiff withdrew its receiving station from said area.

The defendant, Pacific Coast Fishermen's Union, so far controlled the Coos Bay area that in 1938 it prevented fishermen who had caught fish in the international waters from selling or delivering their fish at Marshfield, and by picketing the waterfront made it impossible for these non-member fishermen

to receive ice, laundry and living supplies from merchants and others desiring to trade with them.

By threatening to boycott his business in Alaska, they induced a Seattle fish buyer who proposed to purchase from these outside fishermen, to withdraw his purchasing office at Marshfield, and thereby completely closed said area to all fishermen excepting those belonging to the Pacific Coast Fishermen's Union.

It sought a complete monopoly of any sales and delivery of fish at Westport on the Pacific Coast of the State of Washington in June, 1937, and continued to prevent fishermen who had captured [64] fish in the international waters opposite the states of Oregon and Washington from delivering and selling their fish on land at and near the vicinity of Westport until enjoined from such practices by the state courts of the State of Washington.

It completely closed the mouth of the Columbia River and the estuary of said river to all troll fishermen not members of said organization, and has completely and effectively prevented fishermen who had caught their fish in the Pacific Ocean, and particularly in the international waters opposite the states of Oregon and Washington, from selling or delivering their fish to any dealer at Astoria, Oregon, Ilwaco, Washington, or the vicinity thereof, until a substantial amount of fish offered for delivery had spoiled, until finally a Seattle buyer received the merchantable portion of said fish at

Ilwaco, Washington, and transported the same to Seattle, and said condition continued until the close of the fishing season, in the year 1938.

XVII.

A number of residents of Astoria, Oregon, who had followed troll fishing for many years, were effectively prevented from selling their troll-caught fish in the state of Oregon, or in the state of Washington, except at Westport, and then only after said injunction had been granted. Among said persons were Leonard Pederson and Louis Henningsen, both of whom have resided at Astoria and have followed fishing for twenty years, said Louis Henningsen being the owner of his own residence, and a powered troll boat costing in excess of \$9000, both of which are assessed and upon which he pays taxes in Clatsop County. The said Pederson is also a resident, home-owner, and taxpayer of said county, and became a member of the Pacific Coast Fishermen's Union, but was compelled to either withdraw his membership, or pay a fine of \$100, unless he withdrew his membership in a cooperative fishermen's organization having headquarters at Seattle, the principal purpose of which organization was to purchase supplies for the fishermen, and assist them in marketing such of their fish as they saw fit to sell at Seattle. Said Pederson then withdrew from Pacific Coast Fishermen's Union, along with a large number of other fishermen similarly situated; whereupon, the Pacific Coast Fishermen's Union

blacklisted them and posted their [65] names at the fish receiving stations dominated by the Pacific Coast Fishermen's Union for the purpose of preventing said Pederson and said other fishermen from selling fish at said stations, with the result that they were unable to sell any fish in the state of Oregon, which, as aforesaid, continued until the end of the 1938 fishing season.

That it is the regular practice of a large number of said troll fishermen, including the said Henningsen and Pederson, and a large number of fishermen belonging to said Pacific Coast Fishermen's Union, to commence troll fishing early each season off the coast of Alaska and deliver their fish to buyers at the Alaska ports, and as the season progresses their operations proceed southward along the British Columbia coast with deliveries at Seattle, later at Westport, Columbia River, and at the close of the season the fishing is opposite Northern California and Southern Oregon, with deliveries normally made to Crescent City and Coos Bay Points. That on account of the interference with commerce by the defendants, particularly the Pacific Coast Fishermen's Union and its members, fishermen not belonging to said organization have been prevented from delivering to Crescent City and the Coos Bay and other Oregon Ports, with the result that said fishermen are required either to cease fishing and delivering their fish, or to transport the same to Westport, Washington, which is protected by said injunction order, or to Seattle, which entails an

unnecessary trip consuming three days or more, and unless said boats are equipped with sufficient ice for such additional trip it is not only uneconomical, but impossible to make delivery of said fish in merchantable condition.

XVIII.

During said years said defendant Pacific Coast Fishermen's Union had procured contracts with all of the buyers of fish located in the state of Oregon, and along the Columbia River in the State of Washington whereby the buyers would not purchase fish from anyone not a member of said organization, and said Pacific Coast Fishermen's Union induced the signing of said contracts by the threat that it would prevent all of its members from dealing with any buyers unless [66] he executed a contract containing such exclusive features. That by the terms of said contracts neither said Pacific Coast Fishermen's Union, nor any of its members, undertook any obligation whereby any member of the said Pacific Coast Fishermen's Union would fish, or sell any fish to anyone, but said contracts, as interpreted by both parties thereto, expressly prohibited the buyer from purchasing from anyone not a member of said Pacific Coast Fishermen's Union, and, as hereinabove found and determined, said organization, through its membership controlled 90% or more of the troll fishermen, and in areas 100% of all fishing. Its control of the Umpqua River and Smith River was and is complete and said area

produces more than one million pounds of fish per annum.

That the exclusive feature of the contract entered into in 1936, 1937 and 1938 by the Pacific Coast Fishermen's Union and its members, and all, or practically all of the buyers of fish in Oregon and/or Coast points in the State of Washington, and in California as far south as Crescent City, is substantially the same as the contract demanded by said Pacific Coast Fishermen's Union and its members for the year 1939, which is as follows:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It was admitted by the plaintiff, and the principal officers of the defendant Pacific Coast Fishermen's Union while on the witness stand, that said language means that no buyer signing said contract is permitted to purchase any fish from any person not a member of said Pacific Coast Fishermen's Union.

The defendant Leroy Chenowith is secretary of the Reedsport local of the defendant Pacific Coast Fishermen's Union and a member of its organization committee and active in its affairs. The defendant Walter Weaver is also a member of said organization and of said Reedsport local, and is a member of the managing committees of said local organization.

The defendant Charles Marks and defendant Clyde Chase are not fishermen and are not members

of the Pacific Coast Fishermen's Union, but each is a fish buyer operating, and each having a place [67] of business at the mouth of the Umpqua River. Each has his own plant and is an extensive buyer of fish from fishermen belonging to defendant Pacific Coast Fishermen's Union.

The defendant Chenowith works for the defendant Chase as a buyer and receiver of fish, but the plant is non-union and no union men work for defendant Chase, except the defendant Chenowith.

The defendant Weaver buys fish for Banks & Cole, another non-union fish dealer.

Defendant Marks, in his fish operations, conducts a non-union shop and buys his fish from the members of Pacific Coast Fishermen's Union.

That said Marks, Chase, and Banks & Cole, since the defendant Pacific Coast Fishermen's Union ordered its members to refrain from selling fish to the plaintiff, have been paying 2¢ for male shad, 20¢ for female shad, and 9¢ per pound for salmon; and at the same time, and in the same market, the plaintiff has been paying 2¢ for male shad, 22¢ for female shad, and 10¢ per pound for salmon, notwithstanding which fact, the defendant Pacific Coast Fishermen's Union has been able to, and has prevailed upon its members (with the exception of approximately fifteen) to sell their fish to Banks & Cole, and to defendants Marks and Chase, and defendants Marks and Chase have entered into a contract with the Pacific Coast Fishermen's Union

containing said exclusive clause, whereby they agree not to purchase from any person not a member of said organization.

XIX.

The court finds that there is an open, competitive market for fish and other marine products at the mouth of the Umpqua River and also at the seaports along the coast of California, Washington, Oregon, and the territory of Alaska. That the exclusive contract required by the Pacific Coast Fishermen's Union, as a condition precedent to purchasing any fish from any of its members, is intended to create a monopoly in fishing and other marine products offered for sale and sold in said states and territory, and is against the interest of the public, and violates the rights of persons not members of said or-[68] ganization, including other fishermen, the plaintiff, and other processors dealing in fish and other marine products.

That the defendant Pacific Coast Fishermen's Union and its members and the defendants Marks and Chase, have entered into a plan, scheme and conspiracy having for its purpose the creation of a monopoly along the coast of the states of California, Washington and Oregon, and in the territory of Alaska, in the capturing, selling dealing in and processing and marketing of fish and other marine products, and the products produced therefrom, against the interests of the public and all other persons not belonging to said organization,

and that the purpose in requiring said contracts, as hereinabove described, is to effectively control and monopolize the capturing, taking, selling, dealing in, and processing fish and other marine products in said states and territory, and of preventing other persons from entering into said business, either as fishermen, processors, or otherwise.

XX.

The defendants allege that Pacific Coast Fishermen's Union is a labor organization, but the court finds this is not true. The plaintiff alleges that said Pacific Coast Fishermen's Union is a trade organization, which, in a limited sense, is true, but the court finds and determines that said Pacific Coast Fishermen's Union substantially conforms to the requirements of Sections 521 and 522, Title 15, United States Code Annotated, authorizing the formation by fishermen of organizations for the purpose of carrying on their business; but the court further finds that this statute does not authorize the creation of a monopoly, nor take from an injured party the redress given to him by the Anti-Trust Laws of the United States.

XXI.

That the plaintiff is not engaged in fishing itself, but purchases fish from fishermen, and at the present time produces a large amount of canned fish from its two processing plants in Alaska, and from its floating cannery the steamship "Mennon", and

produces a large amount of canned fish from its two plants in the state of Washington and its two plants in the State of Oregon, and at the present time provides more than 60% of all of the processed [69] fish produced in the state of Oregon, as well as a very substantial amount of the processed fish produced in the state of Washington, and Alaska.

As a condition precedent to buying any fish from any member of the Pacific Coast Fishermen's Union, said organization has required and now requires that plaintiff enter into a contract whereby it will purchase no fish from any person not a member of said organization, and the court finds that if such contract had been entered into the plaintiff would have become a party to said plan, scheme and conspiracy of said defendants, and would thus have been guilty of violating the Anti-Trust Laws of the United States.

XXII.

The court further finds that there was no controversy between the plaintiff and defendant Pacific Coast Fishermen's Union, or any of its members, over the price of fish to be paid, or the price of ice or other supplies to be sold, or over any other matter entering into transactions between the plaintiff and any of the defendants, save and except only the requirement by the Pacific Coast Fishermen's Union and its members, that said exclusive contract be entered into.

XXIII.

The court further finds that certain members of the Pacific Coast Fishermen's Union are willing to sell their products to plaintiff and would do so except for the interference by the said Pacific Coast Fishermen's Union and other members thereof.

XXIV.

That following April 29, 1939, due to the interference by the Pacific Coast Fishermen's Union and the defendants Bambrick, Brandt, Mackie, Murdock, Sandness, Barton, Curtis, Leroy Chenowith, Walter Weaver, Charles Marks, and Clyde Chase, the fishermen fishing on the Umpqua and Smith Rivers, who theretofore had been delivering fish to the plaintiff, and who would have continued to deliver fish to the plaintiff except for the unlawful interference by said defendants, refrained for a period from making deliveries, and a number of said fishermen still refrain from making deliveries to plaintiff who otherwise would have sold and delivered fish to the plaintiff, which has resulted in damage to the plaintiff in the sum of \$600.00. [70]

XXV.

That the defendant Pacific Coast Fishermen's Union controls the production of fish suitable for the purposes of the plaintiff so that the plaintiff cannot operate its business in the states of Oregon and Washington if said defendant and its members are permitted to interfere and boycott the plaintiff

unless and until it enters into the form of contract containing the exclusive provision whereby plaintiff would agree to purchase fish from no one not a member of said Pacific Coast Fishermen's Union.

XXVI.

That the defendant Pacific Coast Fishermen's Union and its members, as part of their plan, scheme and conspiracy to gain complete control and monopoly of the fish capturing and processing business in the states of Oregon, Washington and California, and territory of Alaska, declined and refused to sell any fish to any concern which will not enter into a contract containing the provision prohibiting the purchase of fish and other marine products from any person not a member of said organization, and are now refusing to permit members of said organization to sell fish to any purchaser who has not and does not enter into such contract; that there are a number of other fish canning and processing plants in the state of Oregon and the state of Washington, who are ready, able and willing to purchase fish and other marine products from fishermen who are members of the defendant Pacific Coast Fishermen's Union, and who would purchase the same except for the interference by said organization, whereby it prevents each of its members from selling fish to any such processor or canner.

The court finds that the interference by the defendant Pacific Coast Fishermen's Union and its

members, with the catching and marketing of fish at the time of the commencement of this suit was wrongful and unlawful and violative of the rights of the plaintiff, the public and other fishermen and fish purchasers, and that except for the injunctive relief granted by this court, the defendants would have succeeded in wrongfully and unlawfully monopolizing commerce in fish and other marine products in the states of Oregon and Washington, and to a substantial extent in California, and the territory of Alaska, [71] and that said injunctive relief was proper and should be continued, and that the security given by the plaintiff should be exonerated.

XXVII.

After the commencement of this suit and the service of the complaint, summons and restraining order upon the defendants Glenn Murdock and Jack Curtis, they, together with two other officials of the defendant Pacific Coast Fishermen's Union, for the purpose of coercing and compelling plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union and its members containing the exclusive provisions hereinabove referred to, procured re-affirmation of an agreement with other organizations and individuals theretofore having business relations with the plaintiff, and with whom the plaintiff intended and desired to continue business relations, and said defendants and said other officials procured said other persons and organizations to re-affirm that unless and until the

plaintiff entered into an agreement with the defendant Pacific Coast Fishermen's Union, satisfactory to the defendant Pacific Coast Fishermen's Union, that they, the said other persons and organizations would boycott the plaintiff and refuse to have any business dealings with the plaintiff, it being the intention of said defendants Glenn Murdock and Jack Curtis and said other officials of the defendant Pacific Coast Fishermen's Union thereby to coerce and compel the plaintiff to enter into a contract with the defendant Pacific Coast Fishermen's Union containing said exclusive provisions whereby the plaintiff would be obligated to refrain from purchasing fish from any person not a member of said defendant Pacific Coast Fishermen's Union; and it is further found that said defendants and said other officials did procure said other persons and organizations to re-affirm that unless and until a contract was entered into by the plaintiff to and with the defendant Pacific Coast Fishermen's Union, that the said other persons and organizations would refrain from having business relations with the plaintiff, and the defendant Pacific Coast Fishermen's Union then continued as it had theretofore done to insist that any contract between the plaintiff and the defendant Pacific Coast Fishermen's Union should contain said provisions excluding the plaintiff from purchasing fish from anyone not [72] a member of the defendant Pacific Coast Fishermen's Union.

The following Findings of Fact numbered XXVIII (II) to XLVIII (XXXI), both inclusive, which are hereby made in addition to the findings foregoing, and which are in addition to the foregoing Findings of Fact, were submitted by the defendants as "Proposed Findings of Fact", with the statement that the said findings were "in conformity with the record and with the Court's decision".

Where changes have been made in the findings proposed by defendants, such changes will be shown by italicizing words added, and by lining through words stricken out.

The numbering used by defendants in submitting proposed findings will be shown in parentheses.

XXVIII (II)

That in carrying on its business plaintiff purchases fish and other marine products from the following sources;

(a) Purse seiners, gill netters, and trollers operating in Alaskan Waters.

(b) Gill netters engaged in fishing in the Columbia River.

(c) Trollers engaged in fishing in the Pacific Ocean off the coast of Oregon and Washington, ninety (90%) per cent of whom are members of the Pacific Coast Fishermen's Union.

(d) Persons engaged in taking fish in the rivers, bays, and inlets in the states of Oregon and

Washington, exclusive of the Columbia River, ninety (90%) per cent of whom are members of the Pacific Coast Fishermen's Union.

That a large number of said fishermen own or lease their boats, nets, and other fishing gear, ranging in value from \$100.00 to \$15,000.

XXIX (XII)

That on and immediately following April 20, 1939, a large number of fishermen began fishing in said waters (*the Umpqua and Smith Rivers*) and captured a substantial amount of fish and sold the same to the plaintiff at the regularly established market price, and said fishermen continued said operations until to and including Saturday, April 29, 1939, and continued to sell said fish to the plaintiff to and including said date, when the defendants, the Pacific Coast Fishermen's Union, ordered its members operating in the Umpqua River to cease delivering fish to plaintiff due to the fact that the Pacific Coast Fishermen's Union and the plaintiff were unable to agree [73] upon contractual relationships with regard to the sale of fish to plaintiff, *to-wit, the exclusive buying clause.*

XXX (XIII)

That prior to said date the defendants demanded of the plaintiff that it enter into a contract with said organization wherein and whereby the plaintiff would purchase no fish in said Umpqua River area from anyone not a member of said organization.

That all of the fishermen fishing in said waters are members of said organization, but the plaintiff being advised that its execution of said contract would constitute a violation of the laws of the United States of America, declined and refused to sign the same; whereupon, the defendants, the Pacific Coast Fishermen's Union, through its officers, induced the fishermen fishing in said area to decline, and refuse to sell to the plaintiff any fish caught in the Umpqua River, and thereby said defendants effectively prevented the plaintiff from buying any fish caught in said waters.

XXXI (XIV)

That the Constitution and By-Laws of the Pacific Coast Fishermen's Union provide, among other things, that "the Union Members shall not deliver catches outside of Union agreements".

XXXII (XV)

That the Court finds that in inducing said fishermen to decline and refuse to sell fish to plaintiff, defendant did not use any threats of force or violence nor does the evidence show that any threat of fines were made by any of the defendants but that the fishermen so declined to deliver fish, were prompted to so decline by reason of the above provision of the Constitution and By-Laws of the Pacific Coast Fishermen's Union provided that "the Union members shall not deliver catches outside of Union agreements", *and by the knowledge that they*

would be subject to fines and other disciplinary action.

XXXIII (XVI)

The court further finds that on and after the commencement of this suit on May 4, 1939, and after the temporary restraining order issued by this court had been served, certain of the defendants fishing in the Umpqua River area sold fish to the plaintiff in spite of the [74] provisions of the Constitution and By-Laws of said organization; that on the 3d day of June, 1939, Ben Anderson, attorney for all the defendants appearing herein stated in open court that it was the intention of the Pacific Coast Fishermen's Union, particularly the Umpqua local, to discipline such members as had sold fish as aforesaid, and that unless the defendants were specifically restrained from doing so the Pacific Coast Fishermen's Union would discipline its members in conformity with the provisions of its Constitution and By-Laws.

XXXIV (XVII)

That at least five of said fishermen, who, during the current fishing season having been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said area to the plaintiff until their purchase price is paid; said purchasers had not paid for said boats, one sale had been consum-

mated and a chattel mortgage had been taken. This purchaser and the other prospective purchasers had been fishing and selling their fish to the plaintiff until required to desist by the Pacific Coast Fishermen's Union and its members, whereupon they ceased selling fish to the plaintiff, and have not sold fish to the plaintiff since.

That said market price for fish in said area was established by said organization in agreement with the various dealers, including the plaintiff, who purchase fish in the Umpqua River area, and as aforesaid, there was no disagreement between the plaintiff and the fishermen selling fish over the price thereof, the only disagreement being whether defendants could refuse to sell their products to plaintiff unless plaintiff agreed to buy no fish and service no boats for persons in the Umpqua River area are not members of the Pacific Coast Fishermen's Union.

XXXV (XVIII)

The defendant, the Pacific Coast Fishermen's Union, was organized in 1932 and was made up originally of troll fishermen [75] fishing in the international waters off the coast of the states of Oregon, Washington and California, and the territory of Alaska. Said troll fishing is carried on substantially as follows: Powered boats are used and the fish are caught with hooks and line; a supply of ice is taken aboard at the beginning of the voyage, and as the fish are caught they are suitable cared for, and dependent on conditions, the voyage lasts

three days to two weeks. The boat is manned by from one to three men, one of whom is usually, if not always, the owner of the boat, which, with its equipment, has a value of from \$100 to \$15,000. The voyage is concluded by returning to some fish receiving station selected by the captain of the boat, where the fish are sold and delivered at the going market price.

The troll fishermen have been and now are members of defendant, Pacific Coast Fishermen's Union, whose constitution and by-laws are in evidence.

XXXVI (XIX)

The Pacific Coast Fishermen's Union, since its organization in 1932, has functioned as a collective bargaining agency for *certain of* those engaged in catching fish in the Pacific Ocean adjacent to the States of Oregon and Washington, and in the streams, bays, and inlets of the Oregon and Washington Coast, excluding the Columbia River, and *has* during said period entered into contractual relationship with plaintiff and other packers, which contracts have generally provided that the Pacific Coast Fishermen's Union shall be recognized as the bargaining agency *for its members* and providing for the price to be paid for various kinds and grades of fish; and said contracts ordinarily *carried* a clause which has been the chief subject of *the present* controversy, which clause reads as follows:

"That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-union employees".

It was admitted by plaintiff and the principal officers of the defendant, Pacific Coast Fishermen's Union, that said language means in substance that within the local area where such contracts are made no buyer signing said contract is permitted to purchase any fish from any person not a member of the Pacific Coast Fishermen's [76] Union, and that such buyer will not service and ice boats for persons other than members of the Pacific Coast Fishermen's Union within such local area. Such a contract, would preclude the plaintiff and other buyers from purchasing fish or other marine products from persons engaged in taking fish in the said waters, *other than members of defendant organization, but such contract would not preclude plaintiff from operating its own fishing fleet if it so desired. Plaintiff does no fishing.*

XXXVII. (XX)

The Pacific Coast Fishermen's Union is an organization of persons engaged in fishing and maintains its principal office at Astoria, Oregon; that it is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations; that the Pacific Coast Fishermen's Union issues charters to various local

unions in various ports of the states of Washington and Oregon and have issued such charters to persons engaged in fishing at Reedsport, Westport, Coquille, and other Oregon and Washington ports; that it has been the custom of these local unions so chartered to enter into contractual relationships as aforesaid with plaintiff and other packers and buyers.

The Pacific Coast Fishermen's Union is also a member of the Maritime Federation of the Pacific; the Maritime Federation of the Pacific is a federation of labor organizations of the Pacific Coast; and among the organizations so federated within said organizations are the International Longshoremen and Warehousemen's Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union, and many other organizations whose membership is engaged in maritime work on the Pacific Coast.

XXXVIII. (XXI.)

The Court finds that prior to the organization of the Pacific Coast Fishermen's Union those engaged in fishing were compelled to sell their products at low prices; that during the period of the recent general depression silver-side salmon on occasions were sold to the packers and buyers as low as one cent per pound, and [77] concurrent therewith the retail price of the same product sold to the public

in the same area for "between 15 and 20 cents" per pound: that it would therefore seem that it is necessary for those engaged in fishing to arrange, by lawful contractual relationships, agreements for the sale of their products prior to taking of the fish and other marine products. There is no evidence offered in this case tending to show that the wholesale or retail prices paid ~~by~~ consumers have been enhanced by the activities of these defendants.

XXXIX (XXII)

The Court finds that plaintiff and other packers and dealers of fish and other marine products have heretofore been organized into an organization called the Commercial Fisheries Association; that said association has throughout its existence bargained with the Pacific Coast Fishermen's Union, and has been the collective bargaining agency for packers and dealers; that shortly prior to the institution of this suit plaintiff withdrew from said organization.

XL (XXIII)

The defendants allege that the Pacific Coast Fishermen's Union is a labor organization; but the plaintiff alleges that the Pacific Coast Fishermen's Union is a trade organization. The Court finds and determines, *in accordance with defendants' claim*, that the Pacific Coast Fishermen's Union substantially conforms to the requirements of Section 521 and 522, Title 15 United States Code Annotated,

authorizing the formation by fishermen of *Cooperative* organizations for the purpose of carrying on their business; it finds that said organization markets the products only of its members and no others; that each member of said organization has but one vote and does not or has not declared any dividends in excess of eight (8%) per cent but derives its revenue from membership dues.

XLI (XXIV)

The Court finds that some members of the Pacific Coast Fishermen's Union operating in the Umpqua River are willing to sell their products to plaintiff and have done so since the restraining order was entered herein and would continue to do so except for the interference by the Pacific Coast Fishermen's Union and other members thereof.

[78]

XLII (XXV)

The Court finds that the Fishermen's Cooperative Association is a voluntary association of persons engaged in capturing fish in the Pacific Ocean and in the bays and tributaries adjacent to the States of Oregon and Washington and is a rival organization of the Pacific Coast Fishermen's Union; that the principal marketing outlet of the Fishermen's Cooperative Association is the Seattle Fresh fish market; that on numerous occasions certain members of the Fishermen's Cooperative Association have attempted to market their fish in the State of Oregon; that the defendants have used their best efforts to

prevent the Fishermen's Cooperative Association from marketing fish in Oregon unless such persons join the Pacific Coast Fishermen's Union and withdrew from the rival organization.

The evidence shows that six members of the Fishermen's Cooperative Association are residents of Oregon and that particularly two of these persons, one Henningsen, and one Pederson, became members of the Pacific Coast Fishermen's Union but did not withdraw from the Fishermen's Cooperative Association, whereupon the Pacific Coast Fishermen's Union posted a list of names of persons, including *Henningsen and Pederson*, who were not in good standing for the purpose of preventing such persons from marketing their products with buyers who had contracts with the Pacific Coast Fishermen's Union.

XLIII (XXVI)

The Court finds that defendants Charles Marks and Clyde Chase are not members of the Pacific Coast Fishermen's Union but at all times mentioned in plaintiff's complaint and for some years past, have purchased fish and other marine products taken in the Umpqua River of Oregon and the surrounding districts; that each of the said two defendants own and operate receiving and processing plants in the mouth of the Umpqua River;

That the defendants Chas. Marks and Clyde Chase operate independently of each other—that is, Chas. Marks conducting his operation at Gardner,

Oregon, on the north side of the Umpqua River, and Clyde Chase conducting his operation at Reedsport, Oregon, on the south side of the Umpqua River. [79]

XLIV (XXVII)

That defendants Chas. Marks and Clyde Chase own and operate their separate fleets of fishing boats through an arrangement whereby members of the Pacific Coast Fishermen's Union lease boats from these defendants and turn in their catch and are paid the market price for the same; that it has been the custom of the trade for many years past that where the buyer or processor furnished boats as aforesaid it is tacitly understood that such fishermen shall deliver their catch to the buyer or processor owning the boats.

XLV (XXVIII)

That for *several* years past the defendants Charles Marks and Clyde Chase, as well as plaintiff Columbia River Packers Association, have entered into contractual relationships yearly with the Pacific Coast Fishermen's Union, which contracts have provided, among other things,

"That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-Union employees".

That during the early part of 1939 the plaintiff refused to enter into such agreement but that defendants Chas. Marks and Clyde Chase did enter into

such agreement with defendants. The evidence does not disclose that defendants Chas. Marks and Clyde Chase have committed any overt acts other than entering into said contract with the Pacific Coast Fishermen's Union.

XLVI (XXIX)

The Court finds that two years ago albacore was discovered in the Pacific Ocean off the coast of Oregon and Washington; that such fish were available in commercial quantities; that members of the Pacific Coast Fishermen's Union in the year 1938 captured large quantities of said fish; that in the year 1938 the facilities for processing and packing albacore were limited; that the supply of albacore was in excess of the ability of the packers and buyers to receive *and sell* the same; that it therefore became necessary to limit the catching their taking of albacore, and that the Pacific Coast Fishermen's Union entered upon a course of regulation which permitted its members only to fish on a rotating basis, that is, the Union would [80] dispatch boats of its members in rotation, in conformity to the capacity of the market to absorb the same;

The Court finds that the plaintiff and other packers and buyers have substantially increased their albacore packing facilities, but that there have also been a great infusion of new fishermen and boats scheduled to take albacore in 1939; and that members of the Pacific Coast Fishermen's Union are desirous of obtaining exclusive sales agreements in

order, *for one reason*, that they may gain full employment to the exclusion of non-members during the albacore fishing season of 1939.

XLVII (XXX)

The Court further finds that prior to the filing of the within named suit the Maritime Federation of the Pacific had passed a resolution providing that its affiliates would not make any contracts with plaintiff to furnish Alaska fishermen, cannery workers or other persons engaged in said industry under the jurisdiction of the affiliates of the Maritime Federation of the Pacific unless and until plaintiff had signed contracts with the Pacific Coast Fishermen's Union; that subsequent to the issuing of a restraining order herein the Maritime Federation of the Pacific at a regular meeting passed a motion affirming said former action; that at said time plaintiff's steamships "W. L. Thompson" and "Memnon" were docked at the port of Astoria and would not have been provided with crews by the Maritime Federation of the Pacific until a contract was signed by the Pacific Coast Fishermen's Union, and the plaintiff unless this court *issued the preliminary restraining orders heretofore issued herein*; that upon the issuance of the restraining order heretofore filed herein the essential affiliates of the Maritime Federation of the Pacific signed contracts with plaintiff, and loaded and moved said ships to Alaskan waters.

Note: I would have doubted the adequacy of the record to justify the foregoing Finding that plaintiff's steamships would not have been manned except for the restraining orders. I am making the Finding because defendants have requested it.

XLVIII (XXXI)

The Court finds that the Pacific Coast Fishermen's Union keeps its charter open and will admit to membership any bona fide [81] fishermen engaged in capturing fish in the Pacific Ocean adjacent to the states of Washington and Oregon and in the streams and tributaries thereof so long as such persons are of good moral character and will abide by the constitution and by-laws of said union, but requires that such fishermen withdraw their membership in rival organizations, particularly the Fishermen's Cooperative Association.

Based upon the Findings of Fact heretofore made herein, the court makes and finds the following

CONCLUSIONS OF LAW

I

That the plaintiff at the times alleged in the complaint was, ever since has been, and now is engaged in commerce within the meaning of the Anti-Trust Laws of the United States of America.

II

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase, and Pacific Coast Fishermen's Union, its officers and members, at the times alleged in the complaint were, ever since have been, and now are engaged in commerce withing the meaning of the Anti-Trust Laws of the United States of America.

III

That the contract which the said defendants proposed to make with the plaintiff, if the same had been entered into and carried into effect, would have constituted a violation of the Anti-Trust Laws of the United States of America.

IV

That the contracts between the defendant Pacific Coast Fishermen's Union and the defendants Charles Marks and Clyde Chase for the year 1939, and the practices thereunder, constitute a violation of the Anti-Trust Laws of the United States of America. [82]

V

That the defendants above named, and the other officers and members of the defendant Pacific Coast Fishermen's Union, entered into a plan, scheme, conspiracy and contracts for the purpose of controlling and monopolizing the catching, reducing to possession and ownership, sale and delivery of fish and other marine products processing and marketing of processed products of fish and other marine products taken in the Pacific Ocean and its tributaries within and without the territory of Alaska, and the States of Washington, Oregon and California, all in violation of the Anti-Trust Laws of the United States of America.

VI

That said plan, scheme, conspiracy and contracts were carried into effect and are contrary to the interest of the public and violate the rights of other persons, associations and corporations engaged in catching, selling, purchasing, processing and dealing in fish and other marine products of the Pacific Ocean and its tributaries.

VII

That the plaintiff is entitled to a decree of this court enjoining and forever restraining the defendants and all of them, and all members of the defendant Pacific Coast Fishermen's Union, together with the agents, attorneys, employees, and servants of each and all thereof and those persons in active

concert or participation with them, or any of them, in said plan, scheme, conspiracy and contracts, or any thereof, from in any manner interfering with the legal transaction by the plaintiff of its business, and from preventing the plaintiff from lawfully purchasing fish and other merchantable products and goods, wares and merchandise of any character from any person willing to sell the same to the plaintiff, and from doing any act or thing tending to limit competition in, or create a monopoly of the industry of fishing, capturing and taking fish or other marine products from the Pacific Ocean and its tributaries, selling and disposing of the same, and purchasing fish and other marine products and transporting, processing and selling the same; and from in any manner interfering with the plaintiff in operating its steamships the "Memnon" and the [83] "Wm. L. Thompson", or either thereof, either in loading, unloading, outfitting, dispatching or operating the same, or in procuring, transporting, loading, unloading, shipping and trans-shipping or otherwise handling fish or other marine products, and the processed products therefrom, or any other merchandise or goods, or in procuring, loading, unloading, shipping, trans-shipping or otherwise transporting or dealing in any merchandise, supplies, machinery, equipment or other goods, wares and merchandise, or in employing employees in any way connected with the business of the plaintiff anywhere; and that said decree should further re-

quire the defendants to withdraw any act or thing by them, or any of them done, which had for its purpose, or which was intended, or which might result in any interference with the plaintiff legitimately carrying on its business, or any of its business; and that said decree should further declare the contracts existing between the defendant Pacific Coast Fishermen's Union and the defendants Charles Marks and Clyde Chase to be null and void, and should enjoin and restrain the defendant Pacific Coast Fishermen's Union, its officers and members, from entering into any contract with any person or concern, having for its purpose the creation or continuation of a monopoly, or tending to monopolize the industry of fishing in the Pacific Ocean and its tributaries, or dealing in, processing, or disposing of fish or other marine products taken from said Pacific Ocean and its tributaries.

VIII

Neither a labor dispute nor terms and conditions of employment, within the meaning of the Norris-LaGuardia Act, are involved in this case.

IX

The pleadings shall be deemed amended to cover such portions of the decree as are declaratory in nature, and either party may offer such amendment or amendments, if so desired.

That in addition to the Conclusions of Law foregoing, and the Conclusion No. XXI *infra*, the fol-

lowing Conclusions of Law requested by defendants are made (showing defendants' numbering and changes from the requested Conclusions as in the case of defendants requested Findings of Fact foregoing): [84]

CONCLUSIONS OF LAW

X (I)

That the plaintiff at the times alleged in the complaint was, ever since has been, and now is engaged in commerce within the meaning of the Anti-Trust Laws of the United States of America.

XI (II)

That the defendants, Chas. Marks and Clyde Chase, at all times mentioned in the complaint were and now are engaged in commerce within the meaning of the Anti-trust Laws of the United States of America.

XII (III)

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaves, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, at the times alleged

in the complaint were, ever since have been, and now are engaged in interstate and foreign commerce within the meaning of the Anti-Trust Laws of the United States of America.

XIII (IV)

That the contracts between defendants Pacific Coast Fishermen's Union and defendants Chas. Marks and Clyde Chase for the year 1939 and the practices thereunder constitute a violation of the Anti-Trust Laws of the United States of America, and *the* defendants *including* Chas. Marks and Clyde Chase have thereby unlawfully combined and conspired to interfere with and restrain the trade and business conducted by the plaintiff among the several states and with foreign nations, all in violation of the Anti-Trust *Laws of the United States*.

XIV (V)

That the contracts which the Pacific Coast Fishermen's Union and plaintiff have heretofore entered into in the past years containing the clause, [85]

"That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-Union employees".

and which contract the Pacific Coast Fishermen's Union now propose to make with plaintiff, if carried into effect, would constitute a violation of the Anti-Trust Laws of the United States of America, is unlawful and against public policy.

XV (VI)

That the provision contained in the constitution and by-laws of the Pacific Coast Fishermen's Union, to-wit: "that the Union members shall not deliver catches outside of Union agreements", *so long as the Union agreements contained an exclusive buying clause*, is an illegal provision, is against public policy, void, unenforceable and in violation of the Anti-Trust Laws of the United States of America.

XVI (VII)

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, F. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, and Pacific Coast Fishermen's Union, its officers and members, have unlawfully combined and conspired to interfere with and restrain the trade and business conducted by the plaintiff among the several states and with foreign nations, all in violation of the *Anti-Trust Laws of the United States of America*.

XVII (VIII)

The Court concludes that the defendants against whom relief is sought are engaged in the same in-

dustry, trade, craft, or occupation in which such dispute occurs and have a direct interest therein but that the Court is not deprived of jurisdiction under the Norris-La Guardia Act in that this controversy is not a labor dispute *and does not involve terms and conditions of employment* within the meaning of said Act. [86]

XVIII (IX)

The Court concludes that the members of the Pacific Coast Fishermen's Union are producers, just as cattlemen, grain men, poultry raisers and orchardists are producers, but concludes that it cannot be maintained that a cooperative association of any of the types of producers named, having control of production, *to the extent shown herein*, could require of all buyers that they agree not to buy from any other producers within a given area, *to the extent involved herein*, nor can they lawfully forbid and prevent their members by fines and other disciplinary measures from selling to buyers who did not thus agree to buy only from cooperative members.

XIX (X)

The Court concludes that the provision of Section 522 of Title 15, United States Code Annotated does not constitute an exclusive remedy but that an injured person is entitled to redress *in a proper case* against such cooperative association under the Anti-Trust Laws.

XX (XI)

The plaintiff is entitled to a permanent restraining order against the defendants and each of them, restraining defendants and the Maritime Federation of the Pacific and all other persons from doing the acts complained of in plaintiff's complaint and described in the Findings of Fact herein.

XXI

That plaintiff is entitled to a judgment against the defendants Pacific Coast Fishermen's Union, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, Leroy Chenowith, Walter Weaver, Jack Curtis, George Bambrick and P. J. Barton, for the sum of Eighteen Hundred Dollars (\$1800.00), being triple the actual damages sustained by plaintiff, and for its costs and disbursements incurred herein.

Dated June 14, 1939.

CLAUDE MCCOLLOCH

Judge

[Endorsed]: Filed June 14, 1939. [87]

And Afterwards, to wit, on Wednesday, the 14th day of June, 1939, the same being the 85th Judicial day of the Regular March, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [88]

In the District Court of the United States for the
District of Oregon

No. Civ. 126

COLUMBIA RIVER PACKERS ASSOCIA-
TION, INC., a corporation,

Plaintiff,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B.
BRANDT, CHAS. J. MACKIE, GLENN
MURDOCK, FERDINAND SANDNESS,
P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O.
TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA,
JACK ANSAMA, J. W. BEECROFT,
HENRY BOYE, WILLIS KOOGLER, LEO
LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ,
W. A. PYRTZ, ANDY TOPPI, CHARLES
PILTON, CHARLES MARKS, CLYDE
CHASE AND PACIFIC COAST FISHER-
MEN'S UNION, its officers and members,
JOHN DOE No. 1, JOHN DOE ~~No. 2~~, JOHN
DOE No. 3, JOHN DOE No. 4, JOHN DOE
No. 5, JOHN DOE No. 6, JOHN DOE No. 7,
JOHN DOE No. 8, JOHN DOE No. 9, JOHN
DOE No. 10, JOHN DOE No. 11, JOHN DOE
No. 12, RICHARD ROE No. 1, RICHARD

ROE No. 2, RICHARD ROE No. 3, RICHARD ROE No. 4, RICHARD ROE No. 5, RICHARD ROE No. 6, RICHARD ROE No. 7, RICHARD ROE No. 8, RICHARD ROE No. 9, RICHARD ROE No. 10, RICHARD ROE No. 11, RICHARD ROE No. 12, PETER ROE No. 1, PETER ROE No. 2, PETER ROE No. 3, PETER ROE No. 4, PETER ROE No. 5 and PETER ROE No. 6,
Defendants.

DECREE

This cause having heretofore come on for trial before the Honorable Claude McCulloch, a Judge of the above entitled court, the plaintiff appearing by Jay Bowerman and C. W. Pecore, its attorneys, the defendants appearing as more particularly appears in the two answers filed herein by Ben Anderson, their attorney; the court having heard the evidence and argument of counsel, and considered the briefs and authorities filed and submitted, and being fully advised, and having made and filed Findings of Fact and Conclusions of Law herein entitling the plaintiff to a decree as follows:

It Is Therefore Hereby Considered, Ordered, Adjudged and Decreed by the court: [89]

I.

That at the time alleged in the complaint the plaintiff was, ever since has been, and now is engaged in commerce among the several states and

with foreign nations within the meaning of the Anti-Trust Laws of the United States of America.

II.

That the defendants H. B. Hinton, George Bambrick, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase, and Pacific Coast Fishermen's Union, its officers and members, at the times alleged in the complaint were, ever since have been, and now are engaged in commerce among the several states and with foreign nations within the meaning of the Anti-Trust Laws of the United States of America,

III.

That the contract which the said defendants proposed to make with the plaintiff, if the same had been entered into and carried into effect, would have constituted a violation of the Anti-Trust Laws of the United States of America.

IV.

That the contracts between the defendant Pacific Coast Fishermen's Union and the defendants

Charles Marks and Clyde Chase for the year 1939, and the practices thereunder, constitute a violation of the Anti-Trust Laws of the United States of America, and are contrary to public policy, illegal and void.

V.

That the defendants above named, and the other officers [90] and members of the defendant Pacific Coast Fishermen's Union, entered into a plan, scheme, conspiracy and contracts for the purpose of controlling and monopolizing the catching, reducing to possession and ownership, sale and delivery of fish and other marine products processing and marketing of processed products of fish and other marine products taken in the Pacific Ocean and its tributaries within and without the territory of Alaska, and the States of Washington, Oregon and California, in undue and unreasonable restraint of trade, and all in violation of the Anti-Trust Laws of the United States of America.

VI.

That said plan, scheme, conspiracy and contracts were carried into effect and are contrary to the interest of the public and violate the rights of the plaintiff and other persons, associations and corporations engaged in catching, selling, purchasing, processing and dealing in fish and other marine products of the Pacific Ocean and its tributaries.

6

VII.

That the defendants, and each and all of them, together with all officers and members of the defendant Pacific Coast Fishermen's Union, and also the agents, attorneys, employees and servants of each and all of the defendants, and of said Pacific Coast Fishermen's Union, and its members, and all persons in active concert or participation with them, who receive actual notice of this decree by personal service or otherwise, [91] are forever enjoined and restrained from in any manner interfering with the legal transaction by the plaintiff of its business, and from preventing, or attempting to prevent, or conspiring to prevent the plaintiff from lawfully purchasing fish and other merchantable products, and goods, wares and merchandise of any character from any person otherwise willing to sell the same to the plaintiff, and from doing any act or thing tending to unduly or unreasonably limit competition in, or create a monopoly of the industry of fishing, capturing or taking fish or other marine products from the Pacific Ocean and its tributaries, selling and disposing of the same, and purchasing fish and other marine products, and loading, unloading, transporting, processing and selling the same; and from in any manner interfering with the plaintiff in operating its canneries and other plants and facilities and its steamships the "Memnon" and "Wm. L. Thompson" or either thereof, and its other ships, boats and facilities,

either in loading, unloading, outfitting, dispatching, or operating the same, or in procuring, transporting, loading, unloading, shipping and transshipping, or otherwise handling, freezing, processing or selling fish or other marine products and the processed products therefrom, or any other merchandise or goods, machinery or supplies of every character, or in procuring, loading, unloading, shipping, transshipping, or otherwise transporting or dealing in any merchandise, supplies, machinery, equipment or other goods, wares, and merchandise, or in employing employees in any way connected with the business of the plaintiff anywhere; said defendants and each thereof are further hereby ordered and required to withdraw each and every act or thing by them, or any of them, done which had for its purpose, or which was intended to interfere, or which might result in any interference with the plaintiff legitimately carrying on all of its business [92] or any of its business; the contracts existing between defendant Pacific Coast Fishermen's Union and the defendants Charles Marks and Clyde Chase, wherein and whereby they severally agree not to purchase fish except from the members of the Pacific Coast Fishermen's Union are hereby decreed to be against the interests of the public and a part of the conspiracy to monopolize commerce in fish within the meaning of the Anti-Trust Laws of the United States, and said contracts for the year 1939 are hereby declared to be null and void; said de-

fendant Pacific Coast Fishermen's Union, its officers and members are further enjoined from entering into any contract, plan or conspiracy with any person or concern having for its purpose, or among its purposes, the creation, or continuation of a monopoly, or which tends to monopolize the industry of fishing in the Pacific Ocean and its tributaries, and of dealing in or processing of fish or other marine products taken from the Pacific Ocean and its tributaries.

VIII.

That the plaintiff have and recover of and from the defendants Pacific Coast Fishermen's Union, J. B. Brandt, Chas. J. Mackie, Glenn Murdock, Ferdinand Sandness, Leroy Chenowith, Walter Weaver, Jack Curtis, George Bambrick and P. J. Barton, and each of them, the sum of Eighteen Hundred Dollars (\$1800.00), being triple the actual damages sustained by plaintiff, and that plaintiff recover of and from the said named defendants, and each of them, its costs and disbursements incurred herein, taxed at \$383.15, and that execution issue for the collection thereof.

Dated June 14, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed June 14, 1939: [93]

And afterwards, to wit, on the 22nd day of June, 1939, there was duly filed in said Court, a Petition for New Trial, in words and figures as follows, to wit: [94].

[Title of District Court and Cause.]

PETITION FOR NEW TRIAL

Come now the defendants above named, by their attorney, Ben Anderson, and respectfully petition this Honorable Court for a new trial in this cause, under the rules of this Court, on the following grounds:

(1) Abuse of discretion by which defendants were prevented from having a fair trial, and particularly abuse of the Court's discretion in allowing plaintiff to amend its complaint after plaintiff and defendants had rested their respective case, and subsequent to the closing arguments of counsel.

(2) Insufficiency of the evidence to justify the decree, to-wit:

(a) Insufficiency of the evidence on damages from which the Court could determine that plaintiff was damaged in the sum of Six Hundred (\$600) Dollars or any other sum by acts of defendants.

(b) Insufficiency of the evidence from which the Court could determine that defendants are engaged in interstate or [95] foreign commerce.

(c) Insufficiency of the evidence to show that defendants entered into a plan, scheme, conspiracy and contracts in violation of the Anti-Trust Laws of the United States of America.

(3) Error in law in that the Court's conclusions are contrary to law, contrary to the evidence, and unsupported by the findings of fact.

(4) The Court erred in concluding, to wit:

(a) That defendants are engaged in interstate commerce.

(b) That the within cause does not involve a labor dispute within the meaning of the Norris-La Guardia Act.

(c) That the provisions of Section 522 of Title 15, United States Code Annotated does not constitute an exclusive remedy but that an injured person is entitled to redress in a proper case against such cooperative association under the Anti-Trust Laws.

(5) That the Court's decree is contrary to law and the evidence.

This petition is based upon the records and files of this cause, the pleadings, the court reporter's transcript of testimony and upon the Court's minutes of the trial.

BEN ANDERSON

Attorney for Defendants

[Verification] [96]

Due and legal service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon on this 22nd day of June, 1939.

C. W. PECORE

of Attorneys for Plaintiff

[Endorsed]: Filed June 22, 1939. [97]

And afterwards, to wit, on the 9th day of August, 1939, there was duly filed in said Court, a Supplemental Memorandum Opinion, in words and figures as follows, to wit: [98]

[Title of District Court and Cause.]

SUPPLEMENTAL MEMORANDUM.

The remaining question undisposed of on what defendants have designated as a Motion for New Trial, is whether damages can properly be claimed and allowed in a suit for an injunction under the Anti-Trust Laws. The authorities, prior to the New Federal Rules of Civil Procedure, are that damages may only be claimed in a separate law action. *Fleitman v. Welsbach Street Lighting Co.* 240 U. S. 27, 67 L. Ed. 505; *Decorative Stone Co. v. Building and Trades Council of Westchester County, C. C. A. Second Circuit*, 23 Fed. (2d) 426;—*Certiorari denied*, 277 U. S. 594, 72 L. Ed. 1005. [99]

Have the New Rules changed this rule as to damages?

I believe they have.

Rule No. 2 reads as follows:

“There shall be one form of action to be known as ‘civil action.’”

In Note 2 to the above rule we learn:

“Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.”

Rule 18 provides as follows:

(a) * * * The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. * * *

(b) * * * Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money."

Rule 20 and Forms 12, 13, 16 and 17, following the Rules, also have a bearing on the question.

Whether a defendant in an injunction suit under the Anti-Trust laws is still entitled to a jury trial on the amount of damages, and whether in such jury trial the question of violation of the Anti-Trust laws, in addition to the amount of the damages, is to be redetermined by the jury (assuming that the equitable features of the case have first been tried and ruled adversely to the defendant), are different questions.

The present defendants urge that they were not given fair warning by the complaint herein that damages, as well as injunctive relief, were to be claimed,—if they had had notice that damages were [100] to be claimed, they would have made timely demand for jury trial. On the other hand, plaintiff contends that jury trial was waived by failure to make timely demand.

The prayer of the complaint as to damages is as follows:

“For a decree ascertaining the damages suffered by plaintiff by reason of the unlawful acts of the defendants herein complained of, and awarding judgment in favor of the plaintiff and against the defendants, and each of them, for thrice the amount of said damages.”

The body of the complaint contained no allegation of damage prior to the commencement of the action. The sole allegation as to damage is contained in paragraph XVI, which reads:

“That if a restraining order is granted, no damage will ensue to the defendants, nor to any fisherman, whereas if a restraining order is not granted, the plaintiff will suffer a daily damage (excluding Sundays) continuing throughout the 1939 fishing season, in the aggregate amount of \$20,000, and unless restrained by an order of this court the defendants will continue their said unlawful conduct, and cause the plaintiff to suffer said damage.”

Defendants did not object to the testimony offered by plaintiff of damages occurring prior to the action, but, at the argument of the cause, objected to any claim for damages, on the ground that they had not been pleaded, defendants' counsel stating that if they had been advised by plaintiff's pleading that damages for prior acts would be claimed, defendants would have demanded a jury trial.

Plaintiff thereupon offered an appropriate amendment to its complaint to accord with the proof of damages made at the trial. Decision was reserved on the amendment, and the amendment allowed on the date the decree, which was favorable to plaintiff, was entered.

Plaintiff contends that defendants have waived their right to jury trial by failing to demand it earlier, but I take the view, first, that the complaint prior to amendment was not adequate to advise the defendants that damages for prior acts would be claimed; and second, that my ruling on the date when decree was entered for [101] plaintiff, allowing the amendment to the complaint, to include the allegations of prior damage, was the first time that the defendants had fair notice that damages were claimed and might be allowed, and was the first time defendants were under compulsion by the terms of Rule 38 of the New Rules to demand a jury trial. By that Rule defendants were given ten days in which to make such demand. They were deprived of this right by the immediate entry of the decree. It follows that the portion of the judgment

and decree awarding treble damages should be and it is hereby stricken.

The other portions of defendants' Motion (as indicated at the last hearing) will be denied.

This Supplemental Memorandum will be merged in any final opinion that may be prepared in this case.

Dated August 9th, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed August 9, 1939. [102]

And afterwards, to wit, on the 31st day of August, 1939, there was duly filed in said Court, a Motion to withdraw and to strike, in words and figures as follows, to wit: [103]

[Title of District Court and Cause.]

MOTION

Come now the above defendants by their attorney, Ben Anderson, and move the court as follows:

1. For an order authorizing and permitting said defendants to withdraw from the files and records of the above cause the Proposed Conclusions of Law heretofore filed by the defendants in said cause for the reason that said Proposed Conclusions of Law were filed through inadvertence and oversight.

2. For an order striking from the Findings of Fact and Conclusions of Law heretofore made and entered by the Court in the above cause the following statement appearing on page 31 of said Findings of Fact and Conclusions of Law:

"That in addition to the Conclusions of Law foregoing, and the Conclusion No. XXI infra, the following Conclusions of Law requested by defendants are made (showing defendants' numbering and changes from the requested Conclusions as in the case of defendants requested Findings of Fact foregoing):"

and also striking from the Conclusions of Law heretofore made and entered by the Court in the above cause paragraphs X and XXI, both inclusive, of said Conclusions of Law.

The foregoing motions are based upon the affidavit of Ben Anderson hereto attached and by reference made a part hereof.

BEN ANDERSON

Attorney for Defendants.

Guardian Bldg.

Portland, Oregon

Service accepted 8-31-39

JAY BOWERMAN

Attorney for Plaintiff. [105]

[Title of District Court and Cause.]

AFFIDAVIT

State of Oregon

County of Multnomah—ss.

I, Ben Anderson, being first duly sworn, depose and say:

That I am attorney for the defendants in the above cause; that heretofore I filed in said cause Proposed Findings of Fact and Conclusions of Law for and on behalf of said defendants; that through inadvertence and oversight the said Conclusions of Law filed by me were in conformity with the principles of law enunciated by the Court in the above cause; that said principles of law are contrary to the rules of law urged by affiant for and on behalf of the defendants herein and fail to express the views of the defendants as to the law based upon the Findings of Fact entered in this cause; that at the time of filing said Proposed Conclusions of Law, I was laboring under the mistake that said Proposed Conclusions of Law must conform to the principles of law enunciated by the Court in the Court's memoranda opinion theretofore filed in this cause; said Proposed Conclusions of Law were filed by me merely for the purpose of attempting to clarify the Court's decision and not for the purpose of showing the principles of law urged by affiant for and in behalf of defendants.

BEN ANDERSON

Subscribed and sworn to before me this 31 day of August, 1939.

EUGENE DOWLING

Notary Public for Oregon

My Comm. Expires: 2-24-39

[Endorsed]: Filed August 31, 1939. [106]

And afterwards, to wit, on the 7th day of September, 1939, there was duly filed in said Court, a Waiver of Damages and Remittitur, in words and figures as follows, to wit: [107]

[Title of District Court and Cause.]

WAIVER OF DAMAGES AND REMITTITUR

The plaintiff herein hereby expressly waives its claim for damages involved in this suit against each defendant herein not only in this suit, but for all purposes to the extent such claim for damages has been, or might have been litigated in this cause at the trial thereof, and hereby remits and discharges said defendants to the full extent thereof.

JAY BOWERMAN

Attorney for Plaintiff

COLUMBIA RIVER PACKERS
ASSOCIATION, INC.,

a corporation,

By EDW. W. THOMPSON

President

[Endorsed]: Filed September 7, 1939. [108]

And afterwards, to wit, on Thursday, the 7th day of September, 1939, the same being the 41st Judicial day of the Regular July, 1939 Term of said Court; present the Honorable Claude McColloch, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [109]

In the District Court of the United States for the
District of Oregon

No. Civ. 126

COLUMBIA RIVER PACKERS ASSOCIA-
TION, INC., a corporation,

Plaintiff,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHAS. J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,

JOHN DOE No. 1, JOHN DOE No. 2, JOHN DOE No. 3, JOHN DOE No. 4, JOHN DOE No. 5, JOHN DOE No. 6, JOHN DOE No. 7, JOHN DOE No. 8, JOHN DOE No. 9, JOHN DOE No. 10, JOHN DOE No. 11, JOHN DOE No. 12, RICHARD ROE No. 1, RICHARD ROE No. 2, RICHARD ROE No. 3, RICHARD ROE No. 4, RICHARD ROE No. 5, RICHARD ROE No. 6, RICHARD ROE No. 7, RICHARD ROE No. 8, RICHARD ROE No. 9, RICHARD ROE No. 10, RICHARD ROE No. 11, RICHARD ROE No. 12, PETER ROE No. 1, PETER ROE No. 2, PETER ROE No. 3, PETER ROE No. 4, PETER ROE No. 5, and PETER ROE No. 6,

Defendants.

ORDER

Heretofore the defendants appearing herein having, on June 22, 1939, filed their petition for new trial, and having, on June 22, 1939, filed their motion for an order amending the Findings of Fact, and having, on August 31, 1939, filed their motion (1) for an order authorizing and permitting said defendants to withdraw the proposed Conclusions of Law theretofore filed by the defendants; (2) for an order striking from the Findings and Conclusions theretofore made and entered the certain statement appearing on page 31 of said Findings and Conclusions, and set forth in the motion, and

[110] also striking paragraphs X and XXI from the Conclusions of Law,

It is considered, ordered and decreed that said petition of the defendants for a new trial be and the same is hereby denied and over-ruled, and that the said motions be and the same are hereby over-ruled and denied.

The court heretofore, on August 9, 1939, having filed a Supplemental Memorandum to the effect that the treble damages should be stricken from the decree, giving its reasons therefor, and the plaintiff herein having filed its waiver, disclaimer and remittitur of all damages assessed herein or claimed herein, or which might have been claimed in this cause in the trial thereof,

It is considered, ordered and decreed by the court that the plaintiff take nothing herein, or elsewhere, on account of its claim for damages in this cause of action, and the facts upon which the same was based, or which could have been claimed herein.

Dated: September 7th, 1939.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed September 7, 1939. [111]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, a Notice of Appeal, in words and figures as follows, to wit: [112]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that H. B. Hinton, George Bambrick, J. B. Brandt, Charles J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, its officers and members, defendants above named, hereby appeal to the United States Circuit Court of Appeals for the ninth circuit from that certain judgment and decree entered in this action on the 14th day of June, 1939, as amended by that certain order made and entered in said cause on the 7th day of September, 1939, and which judgment and decree became final on the 7th day of September, 1939, by virtue of an order made and entered on said date in this action, denying defendant's motion for a new trial.

The defendants appeal from said judgment and decree as amended and the whole thereof.

BEN ANDERSON

Attorney for Appellants.

Address: 1207 Guardian Building,
Portland, Oregon.

[Endorsed]: Filed November 29, 1939. [113]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, an Undertaking on Appeal, in words and figures as follows, to wit: [114]

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL

Know all men by these presents, That we, H. B. Hinton, George Bambrick, J. B. Brandt, J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, its officers and members, by their attorney, as principal, and F. M. Arnold and F. I. Arnold, sureties, are held and firmly bound unto the Columbia River Packers Association, Inc., a corporation, plaintiff above named, in the just and full sum of Two Hundred and Fifty Dollars (\$250.00) for the payment of which well and true to be made, we and each of us do hereby bind ourselves, our successors, personal representatives, and assigns, jointly and severally, firmly by *this* presents. [115]

Sealed with our seals and dated this 29 day of November, 1939.

Whereas, The above named defendants have prosecuted and appeal to the United States Circuit Court of Appeals for the ninth circuit to reverse the judgment and decree of the District Court of the United States for the District of Oregon, heretofore rendered and entered in the above cause in favor of the above plaintiff and against the above defendants;

Now, therefore, The condition of this obligation is such that if the said defendants, the principals herein, shall prosecute their appeal with effect and answer all costs if the appeal is dismissed or the judgment affirmed, or answer such costs as the appellate court may award if the judgment is modified, then the said obligation shall be null and void, otherwise to remain in full force and effect.

H. B. Hinton	Harry Ansama
George Bambrick	Jack Ansama
J. B. Brandt	J. W. Beecroft
Chas. J. Mackie	Henry Boye
Glenn Murdock	Willis Koogler
Ferdinand Sandness	Leo Lyster
P. J. Barton	Lyle Lyster
Jack Curtis	Lawrence Noe
Leroy Chenowith	Garth Phillips
Walter Weaver	W. A. Pyrtz
O. Tanner	Andy Toppi
O. H. Brown	Charles Pilton
Newton Cannon	Charles Marks
Wm. Scholtens	Clyde Chase
Roy Reavis	Carl Pyrtz
Arthur Hertel	

and Pacific Coast Fishermen's Union.

By BEN ANDERSON

Their Attorney

F. M. ARNOLD

Surety

F. I. ARNOLD

Surety [116]

State of Oregon,

County of Multnomah—ss.

We, F. M. Arnold, and F. I. Arnold, being each duly and severally sworn, each for myself say: That I am worth the sum of Five thousand Dollars over and above all my just debts and liabilities, exclusive of property exempt from execution; that I am a resident free holder within the state of Oregon, and that I am not a counsellor, or attorney at law, sheriff, clerk, or other officer of any court.

F. M. ARNOLD

Surety

F. I. ARNOLD

Surety

Subscribed and sworn to before me this 29 day of November, 1939.

[Seal]

MARIAN MEYER.

Notary Public for Oregon.

My commission expires July 1, 1941.

Due service accepted this 29th day of November, 1939.

C. W. PECORE—J. G. P.

Of Attorneys for Plaintiff

[Endorsed]: Filed November 29, 1939. [117]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, a Statement of Points upon which Appellant intends to Rely upon Appeal, in words and figures as follows, to wit: [118]

[Title of District Court and Cause.]

**STATEMENT OF POINTS UPON WHICH
APPELLANTS INTEND TO RELY UPON
APPEAL**

Appellants do hereby make the statement that in the prosecution of the appeal of this cause they intend to rely upon the following errors, to-wit:

I.

The District Court erred in including in paragraph XX of his Findings of Fact the following conclusion of law:

“* * * but the court further finds that this statute does not authorize the creation of a monopoly, nor take from an injured party the redress given to him by the Anti-Trust Laws of the United States;”

for the reason that it is improper to include conclusions of law in the findings of fact.

II.

The District Court erred in including in paragraph XXI of his Findings of Fact the following conclusion of law:

“* * * would have been guilty of violating the Anti-Trust laws of the United States;”

for the reason that it is improper to include conclusions of law in the findings of fact. [119]

III.

That the District Court erred in making and entering its Conclusions of Law numbered III, IV, V, VI, VII, XIII, XIV, XV, XVI, XVIII, XIX, XX and XXI and in making and entering the Conclusions of Law referred to in Paragraphs I and II of this Statement of Points for the reason that none of said Conclusions of Law is supported by the District Court's Findings of Fact; that the District Court in his Findings of Fact XX and XL found that the defendant Pacific Coast Fishermen's Union substantially conforms to the requirements of sections 521 and 522, Title 15, United States Code Annotated (Ch. 742, 48 Stat. at L. 1213); that section 522 of said Title 15 provides that if an association, organized pursuant to said Act, monopolizes or restrains trade in interstate or foreign commerce, the Secretary of Commerce shall institute proceedings against said association, and that the remedy provided for in said Section 522 is exclusive and that by virtue of the provisions of said Section 522, no private individual or corporation can institute an injunction or other suit or action against an association organized under the provisions of said Section 521, Title 15, United States Code Annotated (Ch. 742, Sec. 1, 48 Stat. at L. 1213) under the Anti-Trust Laws of the United States.

That the said District Court erred in making and entering each and all of the said Conclusions of Law above referred to for the further reason that the District Court found as a fact in its Findings of Fact No. XXXVIII that "There is no evidence offered in this case tending to show that the wholesale or retail price paid by consumers have been enhanced by the activities of these defendants," and that under and by virtue of said section 522, Title 15, United States Code Annotated (Ch. 742, Sec. 2, 48 Stat. at L. 1214) even the Secretary of Commerce has no authority to institute proceedings against any of such associations unless he has reason to believe that "such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of [120] any aquatic product is unduly enhanced by reason thereof."

IV.

That the District Court erred in making his Conclusions of Law VII, VIII, XVII, XX and XXI for the reason that said Conclusions of Law are not supported by any of the Findings of Fact of said Court and are contrary to law, in that the Court's Findings of Fact disclose that the dispute between the plaintiff and the defendant Pacific Coast Fishermen's Union, its officers and members involve persons who are engaged in the same industry or trade and that said dispute constitutes a labor dispute within the purview of the federal Norris-LaGuardia Act, 47 U. S. Stat. at L., pages

70-73 (29 U.S.C.A., 1938 Cumulative Supp. Secs. 101-114), and that, therefore, the District Court was without authority to issue an injunction in this suit.

V.

That the District Court erred in making and entering paragraphs III to VIII, both inclusive, of the decree in this cause for the reason that said portions of said decree are not supported by any of the District Court's Findings of Fact, and are contrary to law for the reasons set forth under points III and IV of this Statement of Points.

VI.

That paragraphs II and XII of the Conclusions of Law and Paragraph II of the Decree made and entered by the District Court are not supported by any finding of fact made by said court, and are, therefore, erroneous.

VII.

That the Findings of Fact made and entered by the District Court disclose that the District Court of the United States for the District of Oregon did not have jurisdiction of the subject matter of this suit for the reasons set forth in paragraphs III and IV of this Statement of Points. [121]

VIII.

That the District Court erred in making and entering its order denying the following motion of defendants:

"1. For an order authorizing and permitting said defendants to withdraw from the files and records of the above cause the Proposed Conclusions of Law heretofore filed by the defendants in said cause * *.

"2. For an order striking from the Findings of Fact and Conclusions of Law heretofore made and entered by the Court in the above cause the following statement appearing on page 31 of said Findings of Fact and Conclusions of Law:

'That in addition to the Conclusions of Law foregoing and the Conclusion XXI infra, the following Conclusions of Law requested by defendants are made (showing defendants' numbering and changes from the requested Conclusions as in the case of defendants requested Findings of Fact foregoing):'

"and also striking from the Conclusions of Law heretofore made and entered by the Court in the above cause paragraphs X to XXI, both inclusive, of said Conclusions of Law"

that the denial of the foregoing motion was an abuse of discretion on the part of the trial court in that at the time said motion was filed, defendants' motion for a new trial was pending before the court and under Rule 59 of the New Rules of Civil Procedure for the District Courts of the

United States adopted by the Supreme Court of United States, the trial court, while such motion was pending, was empowered to amend its findings of fact and Conclusions of Law; that under Rule 52 of said New Rules of Civil Procedure it was unnecessary for defendants to submit proposed findings or conclusions; and that said proposed Conclusions of Law submitted by the defendants, through the inadvertence of defendants' counsel, were in conformity with the principles of law enunciated by the trial Court, and were contrary to the rules of law urged by defendants' counsel for and on behalf of defendants at the trial, as disclosed by the affidavit of defendants' counsel attached to the Motion above referred to. [122]

(Signed) BEN ANDERSON

Attorneys for defendants and
Appellants

Due service of the within Statement of Points upon which appellants intend to rely upon appeal is hereby accepted in Multnomah County, Oregon, this 29 day of November, 1939, by receiving a copy thereof, duly certified to as such by Ben Anderson, attorney for defendants and appellants.

C. W. PECORE—J. G. P.

Of Attorneys for Plaintiff

[Endorsed]: Filed November 29, 1939. [123]

And afterwards, to wit, on the 29th day of November, 1939, there was duly filed in said Court, a Designation of Contents of Record on Appeal by Appellants, in words and figures as follows, to wit:

[124]

[Title of District Court and Cause.]

DESIGNATION BY DEFENDANTS AND APPELLANTS OF THE PARTS OF THE RECORD AND PROCEEDINGS TO BE INCLUDED IN THE RECORD ON APPEAL.

The defendants and appellants hereby designate the following portions of the record in the above cause to be included in the record on appeal in said cause:

1. Complaint.
2. Answer of defendants Charles Marks and Clyde Chase.
3. Answer of the other defendants.
4. Order allowing complaint to be amended by interlineation.
5. Motion of plaintiff to amend complaint to conform to evidence.
6. Order allowing foregoing motion to be amended.
7. Order dismissing as to the various John Doe, Richard Roe and Peter Roe defendants.
8. Memorandum opinion of the court.
9. Findings of fact and conclusions of law.
10. Decree.
11. Petition for new trial.

12. Waiver of damages and remittitur.
13. Supplemental memorandum opinion of court.
14. Motion of defendants, with affidavit, for order authorizing defendants to withdraw proposed conclusions of law and for order [125] striking certain portions of court's findings of fact and conclusions of law.
15. Order denying motion for a new trial and denying foregoing motions.
16. Notice of appeal with date of filing.
17. Bond on appeal.
18. This designation of parts of record to be included in the record on appeal.
19. Statement of points upon which defendants intend to rely upon appeal.
20. Clerk's certificate.

Dated this 29th day of November, 1939.

BEN ANDERSON

Attorney for Defendants and
Appellants.

Due service of the within Designation by Defendants and Appellants of the Parts of the Records and Proceedings to be included in the Record on Appeal is hereby accepted in Multnomah County, Oregon, this 29th day of November, 1939, by receiving a copy thereof, duly certified to as such by Ben Anderson, Attorney for Defendants and Appellants.

C. W. PECORE—J. G. P.

Of Attorneys for Plaintiff

[Endorsed]: Filed November 29, 1939. [126]

And afterwards, to wit, on the 9th day of December, 1939, there was duly filed in said Court, a Designation of Record on Appeal by Appellee, in words and figures as follows, to wit: [127]

[Title of District Court and Cause.]

DESIGNATION BY PLAINTIFF AND APPELLEE OF THE PARTS OF THE RECORD AND PROCEEDINGS TO BE INCLUDED IN THE RECORD ON APPEAL.

The plaintiff and appellee herein hereby designates the following portions of the record in the above cause to be included in the record on appeal in said cause:

1. The Proposed Findings of Fact proposed by the defendants.
2. The Proposed Conclusions of Law proposed by the defendants.

Dated December 8th, 1939.

JAY BOWERMAN

Attorney for Plaintiff [128]

State of Oregon

County of Multnomah—ss.

Due service of the within Designation by plaintiff, etc. by the delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this 9th day of December, 1939, is hereby admitted.

BEN ANDERSON by KE

Of Attorneys for Defendants

[Endorsed]: Filed December 9, 1939. [129]

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 129, both inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civ. 126, in which Columbia River Packers Association, Inc., is plaintiff and appellee, and H. B. Hinton, et al., are defendants and appellants; that said transcript has been prepared by me in accordance with the designations of contents of the record, on appeal filed therein, and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that the foregoing transcript is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with said designations as the same appear of record and on file at my office and in my custody, except that the proposed findings of fact and conclusions of law submitted by defendants and designated by appellee to be included in the foregoing transcript is not in my custody nor in the files of said cause.

I further certify that the cost of comparing and certifying the within transcript is \$20.35 and that the same has been paid by the appellants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 23rd day of February, 1940.

[Seal]

G. H. MARSH, Clerk

By E. W. KNOWLES,

Deputy [130]

[Endorsed]: No. 9456. United States Circuit Court of Appeals for the Ninth Circuit. H. B. Hinton, George Bambrick, J. B. Brandt, Charles J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, its officers and members, Appellants, vs. Columbia River Packers Association, Inc., a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed: February 24, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 9456

H. B. HINTON, GEORGE BAMBRICK, J. B.
BRANDT, CHAS. J. MACKIE, GLENN
MURDOCK, FERDINAND SANDNESS,
P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O.
TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REVIS,
ARTHUR HERTEL, HARRY ANSAMA,
JACK ANSAMA, J. W. BEECROFT,
HENRY BOYE, WILLIS KOOGLER, LEO
LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ,
W. A. PYRTZ, ANDY TOPPI, CHARLES
PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHER-
MEN'S UNION, its officers and members,
Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIA-
TION, INC., a corporation,

Appellee.

DESIGNATION BY DEFENDANTS AND AP-
PELLANTS OF THE PARTS OF THE
RECORD AND PROCEEDINGS TO BE
PRINTED AND THE POINTS UPON
WHICH DEFENDANTS AND APPEL-
LANTS WILL RELY.

To Hon. Paul P. O'Brien, Clerk of the above entitled court:

The defendants and appellants hereby designate that the entire record in the above named cause, filed in the above named Court, be printed, except that the captions, jurats and verifications be omitted. Points Upon Which Appellants Expect To Rely.

Upon this appeal appellants expect to rely upon the same points set out in their statement of points on which appellants intend to rely upon appeal heretofore filed herein, and which is by reference made a part hereof the same as though said points were set out herein in full.

BEN ANDERSON

Attorney for defendants and appellants

Due service of the foregoing is hereby accepted in Multnomah County, Oregon, this 23d day of February, 1940, by receiving a copy thereof, duly certified to as such by Ben Anderson, attorney for defendants and appellants.

JAY BOWERMAN

Of Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Feb. 24, 1940. Paul P. O'Brien, Clerk.

No. 9456

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS, LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN, NEWTON CANON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS KOUGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S UNION, its officers and members,
Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon.

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, January
28, 1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr. Ben
Anderson, counsel for appellants, and by Mr. Jay
Bowerman, counsel for appellee and submitted to
the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, March
29, 1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
DECREE

By direction of the Court, ordered that the type-
written opinion this day rendered by this court in
above cause be forthwith filed by the clerk, and that

a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the United States for the District of Oregon

OPINION

Before: Garrecht, Haney and Stephens,
Circuit Judges.

Haney, Circuit Judge:

Appellee was successful in its suit brought under the anti-trust laws to obtain a decree enjoining appellants from interfering with appellee in its purchase of fish and other marine products, and adjudicating that all contracts entered into between the Pacific Coast Fishermen's Union and processors and dealers, whereby the latter agreed not to purchase such products from persons not members of such union, to be void.

The Pacific Coast Fishermen's Union, hereafter called the union, is an organization of persons engaged in fishing, and is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations. The union is also a member of the Maritime Federation of the Pacific which is a federation of labor organizations of the Pacific Coast including the International Longshoremen and Warehousemen's

Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union and other organizations.

The union issues charters to various local unions in various ports of the States of Oregon and Washington, and the contracts hereinafter referred to are entered into between the packers of and dealers in fish and the union or such locals.

The packers of and dealers in fish belong to an organization called the Commercial Fisheries Association. Such Association has throughout its existence, bargained with the Union, and has been the collective bargaining agency for the packers and dealers. The union and the Association reach an agreement as to the terms of the contracts to be entered into between it or the locals and the packers of and dealers in fish.

It has been and is the practice of the packers of and dealers in fish to purchase fish and other marine products of the Pacific Ocean and its tributaries from various fishermen who are independent contractors. About 90% of the fishermen belong to the union. We may assume that the union has an effective monopoly on the supply of fish caught, and that interstate or foreign commerce is affected thereby, so that the facts regarding these matters need not be stated. Of course there is nothing to prevent operation of their own fishing fleets by the packers.

The union had procured contracts with the pack-

ers and dealers for the 1936, 1937 and 1938 seasons which contained the provision:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It is conceded that such provision prohibited the packers and dealers from purchasing from anyone but members of the union.

The navigable waters of the Umpqua River and its tributary Smith River are principal sources of supply of shad. The shad is available there for about 60 days each year beginning in April. Under the laws of Oregon the season for commercial fishing opened on April 20, 1939. Fishermen captured fish and sold them to appellee from that date until April 29, 1939. Appellee withdrew from the Commercial Fisheries Association, and declined to enter into a contract with the union on the ground that its execution thereof would violate the anti-trust laws of the United States. The union, thereupon, by threats, intimidation and coercion induced the fishermen not to sell fish to appellee, and prevented appellee from buying any fish caught in the waters mentioned until May 4, 1939, when the court below issued a temporary restraining order against appellants. Appellee was damaged in the amount of \$600 by the refusal to sell and deliver fish to it for the period from April 29, 1939 until May 4, 1939.

The court below held that the contracts entered into were void because in restraint of trade, that ap-

pellants entered into a plan, scheme and conspiracy in restraint of trade. It enjoined appellants interfering with appellee in the purchase of fish. This appeal followed.

Appellants contend that the injunction is prohibited by the Norris-La Guardia Act (29 USCA §§101-115), because of the failure to comply with the procedural prerequisites stated in the act. Appellee makes no argument in reply to this contention.

Section 7 of that act (29 USCA §107) provides in part:

“No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after * * * findings of fact by the court, to the effect— * * *”

Five matters are mentioned in the statute. The court below did not make findings as to one or more of them. If this is a “case involving or growing out of a labor dispute” as defined in the act, then the court below lacked jurisdiction to issue the injunction.

The particular words of section 7 which are in controversy are “in any case involving or growing out of a labor dispute, as herein defined”. The definitions are given in §13 of the act (29 USCA §113) as follows:

“When used in this chapter, and for the purposes of this chapter—

“(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same ~~or an~~ affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a ‘labor dispute’ (as hereinafter defined) of ‘persons participating or interested’ therein (as hereinafter defined).

“(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee * * *"

There are two constructions which might be given to §13.: One is that subdivisions (b) and (c) are applicable to the whole of subdivision (a). The other is that subdivisions (b) and (c) are applicable only to the last clause of subdivision (a). Lacking the legislative history of the act, we think we should not decide which construction is correct unless necessary.

The trial court's holding is that there was no "labor dispute" because "terms or conditions of employment" were not involved. We believe the trial court too narrowly construed the act.

The fact that the members of the union were not, strictly speaking, "employees" of appellee or other packers and dealers does not preclude the holding that a labor dispute existed. *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323; *New Negro Alliance v. Grocery Co.*, 303 U. S. 552, §13(c) of the act. It must be conceded that there was a "controversy". Therefore if such controversy was "concerning terms or

conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment" then there was a "labor dispute" as defined by §13(c) of the act.

New Negro Alliance v. Grocery Co., supra, is distinguishable on its facts. There the controversy was over the race of the people whom the company might or did employ. Here, no such controversy was present, because appellee did not "employ" persons as that word is used in the strict sense. We believe that *Drivers' Union v. Lake Valley Co.*, 311 U. S. 91 is controlling and compels the conclusion that a "labor dispute" in fact existed. There, as here, the controversy was between what we call "employers" on one side, and independent contractors on the other side. There are minor distinctions between the two cases such as the fact that the independent contractors buy from the employers in one, whereas here they sell to the employers, but we believe they are insufficient to change the rule announced in the *Lake Valley* case.

Independently of that case, however, we think the act in question is applicable. In construing the words "terms or conditions of employment" the trial court apparently limited them to mean the ordinary case where one person hired out to another for a stipulated wage or salary. We think such a narrow construction is not justified. The words "terms or conditions" need no further explanation. It is obvious that the controversy over the question

as to whether appellee should purchase fish from members of the union only, was a "term" or "condition". The word "employment" is defined in Webster's New Int. Dict. (2nd Ed.) p. 839 as follows:

"1. Act of employing, or state of being employed; as to seek employment.

"2. That which engages or occupies; that which consumes time or attention; also, an occupation, profession, or trade; service; as agricultural employments."

It can be seen that if the word "employment" is used in several of the senses above mentioned, it is broad enough to cover the situation disclosed here. "The words of a statute are to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears". *Miller v. Robertson*, 266 U. S. 243, 250. See also: *Old Colony Co. v. Comm'r*, 301 U. S. 379, 383. We are unable to find any indication that Congress gave the word a restricted meaning.

The above holding obviates decision of other points presented. The injunction, we think, was granted without jurisdiction to do so, and the portion of the decree granting an injunction must be stricken. We remand the cause to the court below for further consideration regarding the remainder of the decree, to determine whether the bill should

be dismissed in view of *United v. Hutcheson, et al.*,
..... U. S., February 3, 1941, or whether parts
of it may stand.

Reversed and remanded with directions to take
further proceedings in accordance with the views
herein expressed.

BERT EMORY HANEY
FRANCIS A. GARRECHT
Circuit Judges.

[Endorsed]: Opinion. Filed Mar. 29, 1941.
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9456

H. B. HINTON, et al.,

Appellants,

vs.

COLUMBIA RIVER PACKERS ASSOCIA-
TION,

Appellee.

DECREE

Appeal from the District Court of the United
States for the District of Oregon.

This cause came on to be heard on the Transcript
of the Record from the District Court of the United
States for the District of Oregon, and was duly sub-
mitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellants and against the appellee, and that this cause be, and hereby is remanded to the said District Court with directions to take further proceedings in accordance with the views expressed in the opinion of this court.

It is further ordered, adjudged, and decreed by this Court, that the appellants recover against the appellee for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered March 29, 1941.
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, ⁴May 13,
1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION
FOR REHEARING

Upon consideration thereof, and by direction of the Court, it is ordered that the petition of appellee, filed April 26, 1941, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Jay Bowerman, Esq., counsel for the appellee, and good cause therefor appearing, it is ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including June 14, 1941; and in the event the petition for a writ of certiorari to be made by the appellee herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT

United States Circuit Judge

Dated: San Francisco, California, May 15, 1941.

[Endorsed]: Filed May 15, 1941. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred fifty-six (156) pages, numbered from and including 1 to and including 156, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of May, 1941.

[Seal]

PAUL P. O'BRIEN,

Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 20, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7899)

FILE COPY
142
No. _____

Office - Supreme Court U.

FILED

JUN 7 1941

IN THE
SUPREME COURT
of the United States

OCTOBER TERM 1940

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation, *Petitioner*,
vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS,
LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN,
NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL,
HARRY ANSANA, JACK ANSANA, J. W. BEECROFT, HENRY BOYE, WILLIS
KOOGLER, LEO LYSER, LYLE LYSER, LAWRENCE NOEL, GARTH PHIL-
LIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON,
CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S
UNION, its officers and members, *Respondents*,

Petition for Writ of Certiorari

To The United States Circuit Court of Appeals for the Ninth District.

JAY BOWERMAN,
Yeon Bldg., Portland, Oregon

RALPH E. MOODY,
Guardian Building, Salem, Oregon,
Attorneys for Petitioner:

BEN ANDERSON,
Guardian Bldg., Portland, Oregon
Attorneys for Respondents:

SUBJECT INDEX OF PETITION

	Page
Jurisdiction _____	2, 3
Opinions Below _____	2
Petitions _____	2, 21
Questions Presented _____	3, 4
Reasons for Granting Writ _____	20
Specifications of Errors _____	19
Statement _____	6, 19

TITLE OF CASES, TEXT BOOKS AND STATUTES

CASES

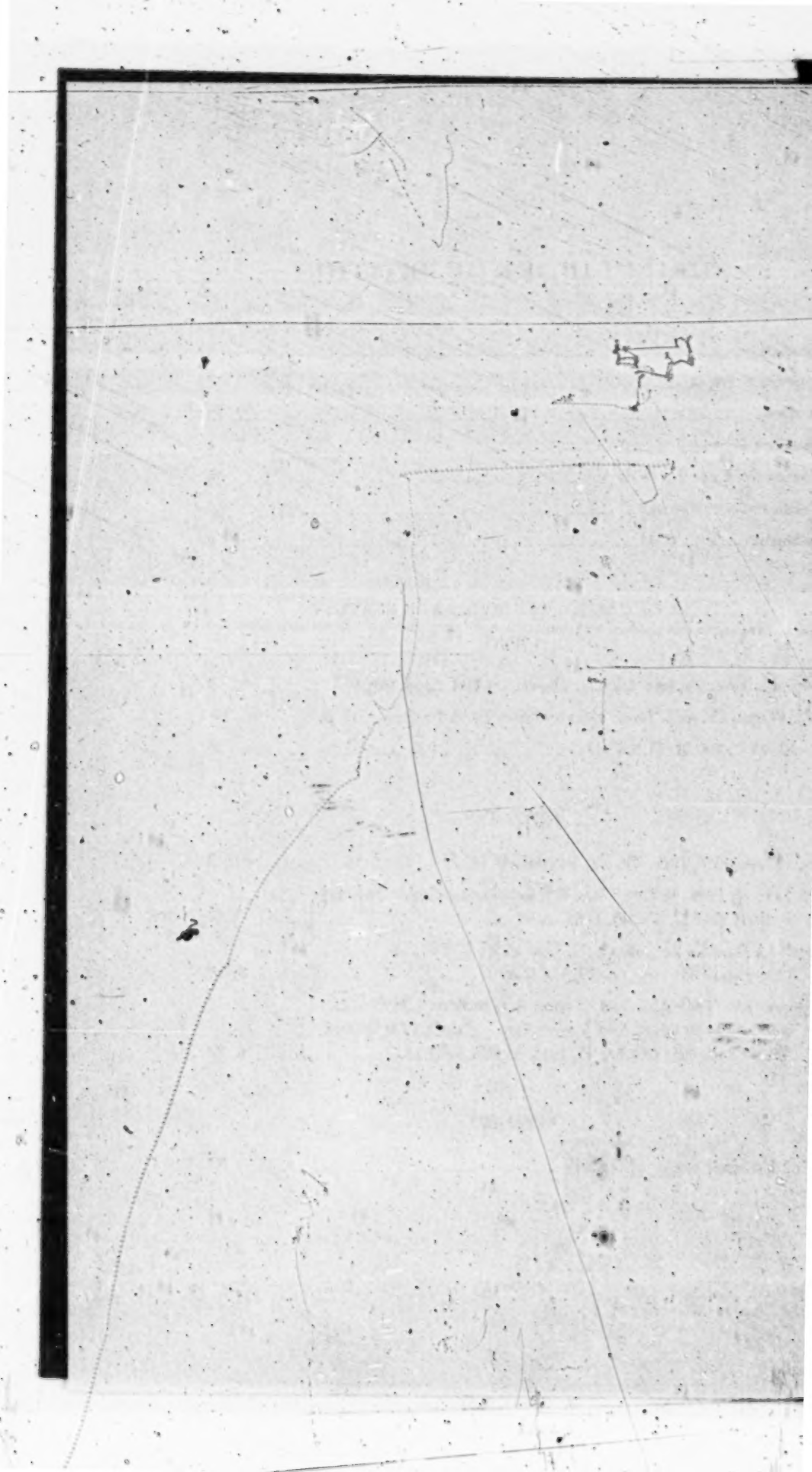
Columbia River Packers Ass'n. v. Hinton, 34 Fed. Supp. 970, 975 _____	2
Milk Wagon Driver's Union v. Lake Valley Farm Products, 311 U. S. 91, 85 L. Ed. 91, 61 S. Ct. 122 _____	20

STATUTES

Act, February 13, 1925, Tit. 28, Sec. 347, U.S.C.A. _____	3
Act, June 25, 1934, 48 Stat. 1213-1214, Relating to Fishing Industry, Sections 521-522, Tit. 15, U.S.C.A. _____	6, 18
Norris-La Guardia Act, March 23, 1932, c. 90, 47 Stat. 70- 73, Sections 101-114, Tit. 29, U.S.C.A. _____	6, 19
Sherman Anti-Trust Law and Clayton Act, Sections 1-26, Tit. 15, U.S.C.A., 1940 Cum. Ann. Pocket Part. (July 2, 1890, 26 Stat. 209, 50 Stat. 693; October 15, 1914, 38 Stat. 730) _____	6, 20

APPENDIX

Opinion Circuit Court of Appeals _____	23
--	----



IN THE
SUPREME COURT
of the United States

OCTOBER TERM 1940

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LeROY CHENOWITH, WALTER WEAVER, O. TANNER, O.
H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEE-
CROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE
LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHERMEN'S UNION its officers and
members,
Respondents.

**Petition To The Supreme Court Of The United
State For A Writ Of Certiorari**

To the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable, the Chief Justices, and the Associate Justices of the Supreme Court of the United States:

Columbia River Packers Association, Inc., an Oregon corporation, by and through its attorneys, Jay Bowerman and Ralph E. Moody, pray that a writ of certiorari be issued to review the ruling, judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit, in the case therein numbered 9456, in which cause the petitioner herein was appellee and the respondents herein were appellants.

OPINIONS BELOW

The opinion of the United States District Court for the District of Oregon is reported in *Columbia River Packers Assn. vs. Hinton*, 84 Fed. Supp. 971, and the opinion in the Circuit Court of Appeals for the Ninth Circuit is attached hereto as an appendix, it having not been published, and it also appears in the record at page 146-154.

JURISDICTION

The decree was made and entered in the United States District Court for the District of Oregon, June 14, 1939, (R. 104-111). The damages allowed by the decree were waived, (R. 121-124). The Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was perfected November 29, 1939, (R. 125-128). The appeal was

heard before three Circuit Judges, (R. 145). Two of the Judges concurred in rendering an opinion on March 29, 1941, (R. 146-154). Petition for Rehearing was filed April 26, 1941, (R. 155); denied May 13, 1941, (R. 155). On motion of petitioner herein, the Circuit Court of Appeals on the 13th day of May, 1941, stayed the issuance of mandate pending the determination of this petition for writ of certiorari by the Supreme Court (R. 156).

The jurisdiction of this court is invoked under section 240 (a) of the Act of February 13, 1925, title 28, section 347, U.S.C.A.

QUESTIONS PRESENTED

1. Whether the Norris-La Guardia Act prohibits United States Courts granting injunction to restrain the enforcement of a contractual provision which compels the exclusive purchase of certain commodities moving in interstate commerce to be made from particular producers and independent contractors organized into a voluntary association controlling 90% of the producers of said commodities.

2. Whether a labor dispute as defined by the Norris-La Guardia Act is involved in a controversy arising, with sole reference to a contract requiring exclusive purchase, between producers and independent contractors who are fishermen voluntarily organized into an association controlling

4

90% or more of the fishermen, who capture and acquire fish and other marine products in the Pacific Ocean and its tributaries, and a corporation engaged in purchasing, processing, canning, merchandising, selling and distributing such fish and marine products in the markets of the United States and various foreign countries.

3. Where there is no controversy between producers and independent contractors who are fishermen voluntarily organized into an association or union, controlling 90% or more of the fishermen, who capture and acquire fish and other marine products in the Pacific Ocean and its tributaries, and a corporation engaged in purchasing, processing, canning, merchandizing, selling and distributing such fish and marine products in the markets of the United States and various foreign countries, over the price of fish to be paid or the price of ice or other supplies to be sold or over any other matter entering into transactions between them, save and except only the requirement of said association and its members that said corporation enter into a contract requiring it to exclusively purchase its fish and marine products from the said association and its members, does such question constitute a labor dispute as defined by the Norris-La Guardia Act?

4. The controversy involved in this case arose between fishermen, who are producers and independent contractors, and the petitioner, which does not fish but which processes

fish produced from these fishermen. The fishermen voluntarily organized an association of 90% or more of the fishermen, producing more than 90% of the fish produced in the area covered by their organization, viz: Alaska, Washington, Oregon and Northern California. Petitioner purchases such fish from the fishermen in Alaska, Washington, Oregon and California, and processes the fish in its cannery in Alaska, and its two canneries in each Washington and Oregon, and merchandizes and distributes the processed fish in the markets of the United States and certain foreign countries. The fishermen, as a condition precedent to the sale of fish by any member of their association, require each processor or dealer to enter into a contract whereby no fish may be purchased from any fishermen not a member of the association.

The question therefore is whether or not, under the above circumstances, there is a labor dispute within the meaning of the Norris-La Guardia Act, which would absolve the parties to this agreement from the liabilities and penalties created and provided for in the Sherman Act.

STATUTES INVOLVED

Sherman Anti-Trust Law and Clayton Act, Sections 1-26, title 15, U.S.C.A., 1940, Cum. Ann. Pocket Part. (July 2, 1890, 26 Stat. 209, 50 Stat. 698; October 15, 1914, 38 Stat. 780).

Act, June 25, 1984, 48 Stat. 1218-1214, Relating to Fishing Industry, Sections 521-522, title 15, U.S.C.A.

Norris-La Guardia Act, March 23, 1932, c. 90, 47 Stat. 70-73, Sections 101-114, title 29, U.S.C.A.

STATEMENT

The statement of facts may best be made in a summarized statement of Findings of Fact made by the District Court for the District of Oregon.

Petitioner is a corporation organized and doing business under the laws of Oregon, having its principal office and place of business at Astoria in said state, and is engaged in purchasing, processing, canning, merchandizing and distributing fish and other products in the Pacific Ocean and its tributaries, and in said connection acquires, transports, processes, cans, sells, disposes of, and distributes marine products caught and acquired from the Pacific Ocean and its tributaries in the markets of the United States and the States thereof, and in various foreign countries, including England, Australia, Germany and other countries.

In carrying on its business it purchases fish and other products of the Pacific Ocean and its tributaries from various and sundry producers and independent contractors who capture and acquire the same, and transport the same within and without the State of Oregon, and dispose of the


same to the petitioner. Said producers and independent contractors are fishermen, and in the operation of their several businesses of fishing for the purpose of capturing and acquiring fish and other marine products, owned, or under lease boats, controlled boats, nets, and other fishing gear and appliances severally, and individually, of a value ranging from \$100 to \$15,000; said individual fishermen not only own, or under lease control their fishing equipment, but to a substantial extent employ the labor of others to assist them in carrying on their fishing operations. Said fishermen are directly employed by no one, but are producers and independent contractors, who fish when and where they choose, and dispose of their fish to whomever they select, limited only by voluntary agreement among themselves as members of the respondent, The Pacific Coast Fishermen's Union.

In each area of the states of Oregon, Washington, California and the territory of Alaska adjacent to which fish and other marine products of the Pacific Ocean and its tributaries are captured, there is an established market price for the various products, and there are a number of established purchasers, such as petitioner, who purchase from said fishermen and other fishermen their various products, paying therefor the established market price.

In carrying on its business it has been the practice of the petitioner along with other dealers to purchase fish and

other products of the Pacific Ocean and its tributaries, which have been caught, captured and reduced to possession and ownership by various and sundry persons, all of which fish, and other marine products have been caught, captured and reduced to possession and ownership by fishermen either on the Pacific Ocean within and without the territorial jurisdiction of the states of Oregon, California and Washington, or upon navigable streams thereof, which said fish and other marine products have been transported from the point of capture to land docks, wharfs and other receiving instrumentalities, on or in the vicinity of land, for sale and delivery to petitioner and other dealers and processors; thereby petitioner has been engaged in commerce between the several states and territories of the United States.

In transacting its business, petitioner owns and operates two large ocean-going steamships, and a large number of smaller ocean-going tenders, and other marine facilities, and also operates two plant factories and processing institutions in Alaska, two in each of the states of Oregon and Washington, at which it purchases, processes, cans and places in condition for sale and distribution its products in the various states and territories of the United States; and petitioner also has receiving stations in the states of Oregon and Washington, where it purchases and receives fish and transports the same to its canning and processing plants in



Washington and Oregon, and petitioner sells, and for many years last past has sold and distributed its products in the states and territories of the United States and in England and Continental Europe and Australia. For more than fifty years petitioner and its predecessor in business, has purchased marine products taken and acquired from the Pacific Ocean and its tributaries which it and its predecessor processed, canned and otherwise placed in condition for sale and disposal in interstate and foreign commerce.

In carrying on its business it has been and is the necessary practice of petitioner to contract in advance for the sale of its products in interstate commerce, and in said connection entered into contracts for the sale and disposal of shad, shad-ro, salmon and other products of the Pacific Ocean and tributaries and waters adjacent to the states of Washington and Oregon and lying within and without the territorial limits thereof. Said contracts were entered into in anticipation of a free, open market for the purchase of raw materials from fishermen engaged in fishing in said waters.

Certain of the respondents, and many other persons, heretofore organized an association or organization known as "The Pacific Coast Fishermen's Union." A local branch of such organization known as "The Umpqua Local of The Pacific Coast Fishermen's Union" is located at Reedsport, Oregon. The Pacific Coast Fishermen's Union is com-

posed of several hundred persons who are residents and inhabitants of Alaska, Oregon, California and Washington. A number of the members are aliens and under the laws of the States of Washington and Oregon are not permitted to fish within the territorial jurisdiction of said states. A large number of the members of said organization conduct their fishing operations in the Pacific Ocean beyond the territorial limits of said states, and after capturing fish in said ocean, bring the same to the markets in the adjacent land areas.

In the membership of said organization are a number of fishermen conducting a fishing business in navigable bays, rivers and other streams in Oregon and Washington which are tributaries to the Pacific Ocean, which fishermen, who fish in the Pacific Ocean and the adjacent waters, own or lease boats they operate, and own the nets and other gear used in their operations, but each thereof operates his business according to his own desires uncontrolled by petitioner or any one else save and except the domination and control of said organization.

The navigable waters of the Umpqua River and its tributaries are one of the principal sources of supply of shad; said shad is available in said navigable waters from a period of approximately sixty days, between April and June of each year. From the shad fish a valuable product known as "shad-roë" is taken, which petitioner and other processors

dispose of either in the fresh market or by processing and canning the same. Petitioner has and for many years last past had a large and valuable business in processing, canning, selling and disposing of canned shad, as well as canned shad-roë; in anticipation of the business in the usual course, as it had theretofore been transacted, petitioner contracted to sell a large amount of said canned shad and canned shad-roë, which product petitioner anticipated would be produced from shad captured in the navigable waters of the Umpqua and Smith Rivers.

Under the laws of Oregon the season for commercial fishing in said waters opened on April 20, 1939, and salmon, shad and other commercial fish were in said waters in commercial quantities in said time; but said waters are not only the principle source of the supply of shad for petitioner's operations, but also a substantial source of supply of salmon and other marine products.

In anticipation of carrying on its business as it had theretofore done, petitioner leased from the port authorities certain dock facilities, constructed thereon a cold storage plant and other facilities for the reception of, purchasing, storing and handling of said fish products, and erected thereon net racks, tanning tanks and adjacent thereto a mooring place for the convenience and accommodation of the fishermen selling their products to petitioner. Petitioner placed operations in charge of competent men and pre-

pared to carry on the fish dealing operations at Reedsport, Oregon, as it had done theretofore.

On and immediately following April 20, 1939, a large number of fishermen began fishing in said waters and captured a substantial amount of fish and sold the same to petitioner at the regular established market price. The fishermen continued their operations until April 29, 1939, and continued to sell said fish to petitioner to and including said date. Thereafter respondents called all fishermen fishing in said waters to cease selling any fish to petitioner. Prior to said date respondents demanded of petitioner that it enter into a contract with said organization wherein and whereby petitioner would purchase no fish in said area from any one not a member of said organization, that all fishermen fishing in said waters are members of said organization, but petitioner being advised that execution of said contract would constitute a violation of the laws of the United States, declined and refused to sign the same; whereupon the controlling authority of said organization, through threats, intimidation and coercion induced the fishermen fishing in said waters to decline and refuse to sell to petitioner any fish caught in said waters, thereby effectually preventing petitioner from buying any fish caught in said waters. Until said action petitioner had been able to purchase and acquire its full requirements of fish from said waters from fishermen who were ready, able and willing to

sell their fish to petitioner, and who would sell their fish to petitioner except for the intimidation, coercion and threats of said respondents. In carrying out their unlawful purpose, the fishermen were threatened with fines, penalties and expulsion from said organization, which prevented their carrying on their fishing operations and the transaction of their business, and the fishermen dealing with petitioner were prevented from carrying on the business of fishing or marketing the same. The Pacific Coast Fishermen's Union and other respondents who control its operation threatened the fishermen operating at Reedsport and on the Umpqua and Smith Rivers with fines and penalties upon such thereof as would sell fish to petitioner.

The market price of fish in said area was established by the Pacific Coast Fishermen's Union in agreement with various dealers, including petitioner, who purchased fish in said area, and there was no disagreement between petitioner and the fishermen selling fish over the price thereof, or over any other matter entering into the business between petitioner and said fishermen. Except for the interference by said Pacific Coast Fishermen's Union with business relations between petitioner and said fishermen, said fishermen would have continued to catch fish, sell and deliver the same to petitioner.

The uniform interpretation and practise under the constitution and by-laws of the Pacific Coast Fishermen's

Union is that the organization assumes jurisdiction over troll fishing at Alaska, and trolling, gill-netting and crabbing along the coast of British Columbia and Puget Sound and along the coasts of the states of Washington, Oregon and California, exclusive of the Columbia River and its tributaries. It controls 90% of the troll fishing in these areas and 100% control of all types of fishing in the Umpqua and Smith Rivers. The jurisdiction of the Pacific Coast Fishermen's Union as far south as Crescent City, California, was enforced in 1938 against petitioner to the extent where its boycott of petitioner was so efficient that petitioner withdrew its receiving station from said area. The Pacific Coast Fishermen's Union so far controlled the Coos Bay area that in 1938 it prevented fishermen who had caught fish in international waters from selling or delivering their fish at Marshfield, Oregon, and by picketing the waterfront made it impossible for non-member fishermen to receive ice, laundry and living supplies from merchants and others desiring to trade with them. By threatening to boycott business in Alaska they induced a Seattle fish buyer who proposed to purchase from outside fishermen, to withdraw his purchasing office at Marshfield, thereby completely closed said area to all fishermen excepting those belonging to the Pacific Coast Fishermen's Union.

The Pacific Coast Fishermen's Union sought a complete monopoly of any sales and delivery of fish at West-

port on the Pacific coast of the state of Washington in June 1937, and continued to prevent fishermen who had captured fish in the international waters opposite of the states of Oregon and Washington from delivering and selling their fish on land at or near the vicinity of Westport, until enjoined from such practices by the courts of the state of Washington. Said union completely closed the mouth of the Columbia River and its estuary of said river to all troll fishermen not members of said organization, and completely and effectively prevented fishermen who caught their fish in the Pacific Ocean and particularly in the international waters opposite the states of Oregon and Washington from selling or delivering their fish to any dealer at Astoria, Oregon, Ilwaco, Washington, or the vicinity thereof until a substantial amount of fish offered for delivery had spoiled, until finally a Seattle buyer received the merchantable portion of said fish at Ilwaco, Washington, and transported the same to Seattle, and said condition continued until the close of the fishing season of 1938. A number of residents of Astoria, Oregon, who had followed troll fishing for many years were effectively prevented from selling their troll-caught fish in the states of Oregon and Washington.

The Pacific Coast Fishermen's Union procured contracts with all of the buyers of fish located in Oregon and along the Columbia River in Washington, whereby the

buyers would not purchase fish from any one not a member of the Pacific Coast Fishermen's Union, having induced the signing of said contracts by threats that it would prevent all its members from dealing with any buyer, unless he executed a contract containing such exclusive features. By the terms of such contracts neither the Pacific Coast Fishermen's Union nor any of its members undertook any obligation whereby any member of said Pacific Coast Fishermen's Union would fish or sell any fish to any one. Said contract expressly prohibited the buying, or purchasing from any one not a member of the said Pacific Coast Fishermen's Union.

Its control of the Umpqua River and the Smith River was and is complete and said area produces more than 1,000,000 pounds of fish per annum.

The exclusive feature of the contract entered into in 1936, 1937, 1938 by the Pacific Coast Fishermen's Union and its members, and all or practically all of the buyers of fish in Oregon and coast points in Washington and in California as far south as Crescent City, is substantially the same contract demanded by said union and its members for the year 1939, which is as follows:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or along side non-union employees."

It is conceded that said language means that no buyer signing said contract is permitted to purchase any fish from any person not a member of said Pacific Coast Fishermen's Union.

There is an open, competitive market for fish and other marine products. The exclusive contract required by the Pacific Coast Fishermen's Union as a condition precedent to purchasing any fish from any of its members is intended to create a monopoly in fishing and other marine products offered for sale and sold in the Pacific coast states and territories, and it is against the interests of the public and violates the rights of persons not members of said organization, including other fishermen, petitioner and other processors dealings in fish and other marine products.

The Pacific Coast Fishermen's Union and its members entered into a plan, scheme and conspiracy having for its purpose the creation of a monopoly along the coasts of the states of California, Oregon and Washington and Alaska in capturing, selling, dealing and processing and marketing fish and other marine products, and products produced therefrom against the interests of the public and all other persons not belonging to said organization, and the purpose in requiring said contracts as hereinbefore described is to effectually control and monopolize the capture, taking, selling, dealing in, and processing fish and other marine

products in said states and territory and preventing other persons entering said business either as fishermen, processors or otherwise.

The Pacific Coast Fishermen's Union is not a labor organization, but is a trade organization and substantially conforms to the requirement of section 521, 522, title 15, United States Code Annotated, authorizing the formation by fishermen for the purpose of carrying on their business.

Petitioner is not engaged in fishing, but purchases fish from fishermen and produces a large amount of canned fish from its processing plants in Alaska and from its floating cannery, and produces a large amount of canned fish from its two plants in the state of Washington and its two plants in the state of Oregon, and provides more than 60% of all the processed fish produced in the State of Oregon as well as a substantial amount of processed fish produced in the State of Washington. As a condition preceded to buying any fish from any member of the Pacific Coast Fishermen's Union, said organization has required and now requires that petitioner enter into a contract whereby it will purchase no fish from any person not a member of said organization.

There was no controversy between the petitioner and the Pacific Coast Fishermen's Union, or any of its members over the price of fish to be paid, or the price of ice or

other supplies to be sold or over any other matter entering into transactions between petitioner and any of the respondents, save and except only the requirement by the Pacific Coast Fishermen's Union and its members that said exclusive contract be entered into. Said members of the Pacific Coast Fishermen's Union are willing to sell their products to petitioner, and would do so, except for the interference of the Pacific Coast Fishermen's Union and other members thereof. (Record p. 54-95).

SPECIFICATION OF ERRORS TO BE URGED

1. In holding that in the case at bar the Norris-La Guardia Act (29 U.S.C.A., sections 101-115) applied.

2. In holding that in the case at bar the courts of the United States under the provisions of the Norris-La Guardia Act are without jurisdiction to issue a temporary or permanent injunction.

3. In holding that in the case at bar the courts of the United States are prohibited by the Norris-La Guardia Act from issuing an injunction.

4. In holding that in the case at bar there was involved a labor dispute.

5. In holding that the case at bar is controlled in prohibiting an injunction by the decision of this court in Milk Wagon Driver's Union v. Lake Valley Farm Products, 311 U. S. 91, 85 L. Ed. 91, 61 S. Ct. 122.

6. In holding that in the case at bar the United States District Court granted the injunction "without jurisdiction to do so," and in holding that "the decree granting an injunction must be stricken."

7. In reversing the decree of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals in the case at bar decided an important question of federal law which has not been, but should be, settled by this court.

2. The decision of the Court of Appeals in the case at bar decides a federal question in conflict with applicable decisions of this court.

3. The question whether the anti-trust laws of the United States are applicable to the facts found to exist in the case at bar is of such paramount public importance and interest as to call for an exercise of this court's power of supervision over this cause.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the ruling, order, judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit should be granted and, when so granted, this Court review the whole and entire cause.

JAY BOWERMAN,

RALPH E. MOODY,

Attorneys for Petitioner.

APPENDIX

NO. 9456

**United States
Circuit Court of Appeals
For the Ninth Circuit**

MARCH 29, 1941

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LeROY CHENOWITH, WALTER WEAVER, O. TANNER, O.
H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEE-
CROFT, HENRY BOYE, WILLIS KOOGLER, LEO LYSTER, LYLE
LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHERMEN'S UNION its officers and
members, *Appellants.*

vs.

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Appellee

**Upon Appeal from the District Court of the
United States for the District of Oregon.**

Before: GARRECHT, HANEY AND STEPHENS, *Circuit Judges.*
HANEY, *Circuit Judge.*

Appellee was successful in its suit brought under the anti-trust laws to obtain a decree enjoining appellants from interfering with appellee in its purchase of fish and other marine products, and adjudicating that all contracts entered into between the Pacific Coast Fishermen's Union and processors and dealers, whereby the latter agreed not to purchase such products from persons not members of such union, to be void.

The Pacific Coast Fishermen's Union, hereafter called the union, is an organization of persons engaged in fishing, and is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations. The union is also a member of the Maritime Federation of the Pacific which is a federation of labor organizations of the Pacific Coast including the International Longshoremen and Warehousemen's Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union and other organizations.

The union issues charters to various local unions in various ports of the States of Oregon and Washington, and the contracts hereinafter referred to are entered into between the packers of and dealers in fish and the union or such locals.

The packers of and dealers in fish belong to an organiz-

ation called the Commercial Fisheries Association. Such association has throughout its existence, bargained with the Union, and has been the collective bargaining agency for the packers and dealers. The Union and the Association reach an agreement as to the terms of the contracts to be entered into between it or the locals and the packers of and dealers in fish.

It has been and is the practice of the packers of and dealers in fish to purchase fish and other marine products of the Pacific Ocean and its tributaries from various fishermen who are independent contractors. About 90% of the fishermen belong to the union. We may assume that the union has an effective monopoly on the supply of fish caught, and that interstate or foreign commerce is affected thereby, so that the facts regarding these matters need not be stated. Of course there is nothing to prevent operation of their own fishing fleets by the packers.

The Union had procured contracts with the packers and dealers for the 1936, 1937 and 1938 seasons which contained the provision:

"That is is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It is conceded that such provision prohibited the packers and dealers from purchasing from any one but members of the union.

The navigable waters of the Umpqua River and its tributary Smith River are principal sources of supply of shad. The shad is available there for about 60 days each year beginning in April. Under the laws of Oregon the season for commercial fishing opened on April 20, 1939. Fishermen captured fish and sold them to appellee from that date until April 29, 1939. Appellee withdrew from the Commercial Fisheries Association, and declined to enter into a contract with the union on the ground that its execution thereof would violate the anti-trust laws of the United States. The union thereupon, by threats, intimidation and coercion induced the fishermen not to sell fish to appellee, and prevented appellee from buying any fish caught in the waters mentioned, until May 4, 1939, when the court below issued a temporary restraining order against appellants. Appellee was damaged in the amount of \$600 by the refusal to sell and deliver fish to it for the period from April 29, 1939 until May 4, 1939.

The court below held that the contracts entered into were void because in restraint of trade, that appellants entered into a plan, scheme and conspiracy in restraint of trade. It enjoined appellants interfering with appellee in the purchase of fish. This appeal followed.

Appellants contend that the injunction is prohibited by the Norris-La Guardia Act (29 U.S.C.A. Secs. 101-115), because of the failure to comply with the procedural prere-

quisites stated in the act. Appellee makes no argument in reply to this contention.

Section 7 of that act (29 U.S.C.A., Sec. 107) provides in part:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after * * * findings of fact by the court, to the effect — — * * *"

Five matters are mentioned in the statute. The court below did not make findings as to one or more of them. If this is a "case involving or growing out of a labor dispute" as defined in the act, then the court below lacked jurisdiction to issue the injunction.

The particular words of section 7 which are in controversy are "in any case involving or growing out of a labor dispute, as herein defined." The definitions are given in Sec. 13 of the act (29 U.S.C.A., Sec. 113) as follows:

"When used in this chapter, and for the purpose of this chapter—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1)

between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined.)

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee • • •"

There are two constructions which might be given to Sec. 13. One is that subdivisions (b) and (c) are applicable to the whole of subdivision (a). The other is that subdivisions (b) and (c) are applicable only to the last clause

of subdivision (a). Lacking the legislative history of the act, we think we should not decide which construction is correct unless necessary.

The trial court's holding is that there was no "labor dispute" because "terms or conditions of employment" were not involved. We believe the trial court too narrowly construed the act.

The fact that the members of the union were not, strictly speaking, "employees" of appellee or other packers and dealers does not preclude the holding that a labor dispute existed. *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323; *New Negro Alliance v. Grocery Co.*, 303 U. S. 552; Sec. 13 (c) of the act. It must be conceded that there was a "controversy." Therefore if such controversy was "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment" then there was a "labor dispute" as defined by Sec. 13 (c) of the act.

New Negro Alliance v. Grocery Co., *supra*, is distinguished on its facts. There the controversy was over the race of the people whom the company might or did employ. Here, no such controversy was present, because appellee did not "employ" persons as that word is used in the strict sense. We believe that *Drivers' Union v. Lake Valley Co.*,

311 U. S. 91 is controlling and compels the conclusion that a "labor dispute" in fact existed. There as here, the controversy was between what we call "employers" on one side, and independent contractors on the other side. There are minor distinctions between the two cases such as the fact that the independent contractors buy from the employers in one, whereas here they sell to the employers, but we believe they are insufficient to change the rule announced in the Lake Valley case.

Independently of that case, however, we think the act in question is applicable. In construing the words "terms or conditions of employment" the trial court apparently limited them to mean the ordinary case where one person hired out to another for a stipulated wage or salary. We think such a narrow construction is not justified. The words "terms or conditions" need no further explanation. It is obvious that the controversy over the question as to whether appellee should purchase fish from members of the union only, was a "term" or "condition." The word "employment" is defined in Webster's New Int. Dict. (2nd Ed.) p. 839 as follows:

"1. Act of employing, or state of being employed; as to seek employment.

"2. That which engages or occupies; that which consumes time or attention; also, an occupation, profession, or trade; service; as agricultural employments."

It can be seen that if the word "employment" is used in several of the senses above mentioned, it is broad enough to cover the situation disclosed here. "The words of a statute are to be read in their natural and ordinary sense, giving them a meaning to their full extent and capacity, unless some strong reason to the contrary appears." *Miller v. Robertson*, 266 U. S. 243, 250. See also: *Old Colony Co. v. Comm'r*, 301 U. S. 379, 383. We are unable to find any indication that Congress gave the word a restricted meaning.

The above holding obviates decision of other points presented. The injunction, we think, was granted without jurisdiction to do so, and the portion of the decree granting an injunction must be stricken. We remand the case to the court below for further consideration regarding the remainder of the decree, to determine whether the bill should be dismissed in view of *United v. Hutcheson*, et al—U. S. —, February 3, 1941, or whether parts of it may stand.

Reversed and remanded with directions to further proceedings in accordance with the views herein expressed.

IN THE
SUPREME COURT
of the United States

OCTOBER TERM 1940

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation,
Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LeROY CHENOWITH, WALTER WEAVER, O. TANNER, O.
H. BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS,
ARTHUR HERTEL, HARRY ANSAMA, JACK ANSAMA, J. W. BEE-
CROFT, HENRY BOYE, WILLIS KOGLER, LEO LYSTER, LYLE
LYSTER, LAWRENCE NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON, CHARLES MARKS, CLYDE
CHASE and PACIFIC COAST FISHERMEN'S UNION its officers and
members,
Respondents.

**BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

To The United States Circuit Court of Appeals for the Ninth District.

JAY BOWERMAN, *Yeon Building, Portland, Oregon.*

RALPH E. MOODY, *Guardian Building, Salem, Oregon.*
Attorneys for Petitioners.

BEN ANDERSON, *Guardian Building, Portland, Oregon,*
Attorney for Respondents.

SUBJECT INDEX OF BRIEF

Brief in Support of Petition for Writ of Certiorari	Page 1, 10
---	---------------

TITLE OF CASES, TEXT BOOKS AND STATUTES CASES.

Columbia River Packers Ass'n. v. Hinton, 34 Fed. Supp. 970, 975	10
Ethyl Gasoline Corp. v. United States, 309 U. S. 188	5
Fashion Originator's Guild of America v. Federal Trade Comm., 85 L. Ed. 557, 61 S. Ct. 703	6
Interstate Circuit v. United States, 304 U. S. 55, 56-57	3
Interstate Circuit v. United States, 306 U. S. 208	5
Lauf v. E. G. Shinner & Co., 303 U. S. 323, 327	3
Local 167 v. United States, 291 U. S. 293	5
Milk Wagon Driver's Union v. Lake Valley Products, 85 L. Ed. 91, 61 S. Ct. 122	7
Millinery Creator's Guild v. Federal Trade Comm., 85 L. Ed. 563, 61 S. Ct. 708	6
United States v. Borden, 308 U. S. 188	5
United States v. Brims, 272 U. S. 549	5
United States v. Hutcheson, 85 L. Ed. 422, 61 S. Ct. 463	8, 9
United States v. Socony-Vacuum Oil Co., 310 U. S. 150	5
United States v. Trenton Pottery, 273 U. S. 392	5

STATUTES

Act, June 25, 1934, 48 Stat. 1213-1214, Relating to Fishing Industry, Sections 521-522, Tit. 15, U.S.C.A.	4, 6
Norris-La Guardia Act March 23, 1932, c. 90, 47 Stat. 70-73, Sections 101-114, Tit. 29, U.S.C.A.	7, 8, 9
Sherman Anti-Trust Law and Clayton Act, Sections 1-26, Tit. 15, U.S.C.A., 1940, Cum. Ann. Pocket Part. (July 2, 1890, 26 Stat. 209, 50 Stat. 693; October 15, 1914, 38 Stat. 730)	5, 8, 9

RULES

Equity Rule, 70½	1
------------------	---

BRIEF

In support of the petition for the issuance of a writ of certiorari herein, petitioner respectfully submits the following considerations:

I.**Findings of Fact Conclusive**

In compliance with Equity Rule 70 $\frac{1}{2}$, the District Court, "the court of first instance," did "specially" and specifically make and enter of record Findings of Fact and Conclusions of Law in this cause, and on the appeal taken to the Circuit Court of Appeals from the decree, the clerk did "include" such Findings and Conclusions "in the record" which was "certified to the Appellate Court." (R. 54-95).

The Transcript of Record contains no agreed statement of facts, and none of the evidence or testimony taken in the cause; therefore, these Findings of Fact are conclusive on the Appellate Courts.

Lauf v. E. G. Shinner & Co., 303 U. S. 323, 327.

Interstate Circuit v. United States, 304 U. S. 55, 56-57.

II.

Under Findings of Fact No Labor Dispute Involved in This Case.

Findings of Fact, II (R. 55-56); XIV (R. 65-66); XX, XXI, XXII (R. 75-76).

III.

Pacific Coast Fishermen's Union Is Composed of Fishermen Who Are Producers and Independent Contractors.

Findings of Fact, II (R. 55-56); VI, VII (R. 58-60); XV, XVI (R. 66 - 69); XXI, XXII, (R. 75 - 76); XXVIII (II), (R. 81 - 82); XXXV (XVIII), XXXVI (XIX), XXXVII (XX), (R. 85-88).

IV.

Pacific Coast Fishermen's Union Is Not a Labor Organization But a Trade Organization and Conforms to the Requirements of Section 521 and 522, Title 15, U. S. C. A.

Findings of Fact, XX (R. 75); XL (XXIII), (R. 89-90).

Pacific Coast Fishermen's Union Created and Maintained a Monopoly and Fixed the Prices for the Product in the Fish Industry in Alaska, Oregon, Washington and California in Violation of the Anti-Trust Laws of the United States.

Findings of Fact, II (R. 55-56) ; VI, VII, (R. 58-60) ; and XI to including XXXVII (XX), (R. 62-88).

The Circuit Court of Appeals in its opinion, herein sought to be reviewed, said:

"We may assume that the union has an effective monopoly on the supply of fish caught, and that interstate or foreign commerce is affected thereby," (R. 146, 147).

The facts so found constitute a violation of the Anti-Trust laws of the United States under the decision of this court.

United States v. Brims, 272 U. S. 549.

United States v. Trenton Potters, 273 U. S. 392.

Local 167 v. United States, 291 U. S. 293.

Interstate Circuit v. United States, 306 U. S. 208.

United States v. Borden, 308 U. S. 188.

Ethyl Gasoline Corp. v. United States, 309 U. S. 436.

United States v. Socony-Vacuum Oil Co., 310 U. S. 150.

Fashion Originator's Guild of America v. Federal Trade Comm. (March 3, 1941), 85 L. Ed. 557, 61 S. Ct. 703.

Millinery Creator's Guild v. Federal Trade Commission, (March 3, 1941), 85 L. Ed. 563, 61 S. Ct. 708.

VI.

The Fishing Industry Act (June 25, 1934, c. 742, 48 Stat. 1213, sections 521-522, Tit. 15, U.S.C.A.), Does Not Operate to Repeal the Sherman Anti-Trust Act.

The fact, the trial court found, in its findings XX (R. 75) and XL (XXIII) (R. 89-90), that, the Pacific Coast Fishermen's Union substantially conforms to section 521 and 522, title 15, U.S.C.A., does not either exempt or exclude its activities from the operation or provisions of the Sherman Anti-Trust Act. Such question is settled and determined by this court in *United States v. Borden Co.*, 308 U. S. 188.

VII.

The Decision of This Court in Milk Wagon Driver's Union v. Lake Valley Farm Products, 311 U. S. 91, 85 L. Ed. 91, 61 S. Ct. 122, Is Not Controlling in the Case at Bar.

The Circuit Court of Appeals erred in its ruling and holding that:

"We believe that Drivers' Union v. Lake Valley Co., 311 U. S. 91 is controlling and compels the conclusion that a 'labor dispute' in fact existed. There, as here, the controversy was between what we call 'employers' on one side, and independent contractors on the other side." (R. 152).

This statement manifests its fallacy, as there cannot be under the Norris-La Guardia Act a "controversy" "between employers on one side and independent contractors on the other side" which would constitute under the Norris-La Guardia Act a "labor dispute." Were that so the Norris-La Guardia Act has completely repealed the Federal Anti-Trust Laws.

In the Driver's Union-Valley case this court found from the evidence, as did the District Court therein, that the persons therein characterized as "vendors" of the milk, were not independent contractors, but "were actually re-

garded as employees of the plaintiff's dairies." 85 Law Ed. 91, 95, notes 9, 10 and 11.

The rules of law announced under the facts found to exist in the Driver's Union case have no application to the facts found to exist in the case at bar.

VIII.

United States v. Hutcheson, (February 3, 1941, 85 L. Ed. 422, 61 S. Ct. 463), **Not Controlling or Applicable to the Case at Bar.**

The Court of Appeals in the closing part of its opinion herein refers to the case of *United States v. Hutcheson*, (R. 146, 154).

The Hutcheson case is based upon the conceded premise that the criminal indictment therein arose out of a "labor dispute," as defined by the Norris-La Guardia Act. The majority opinion said "concededly an injunction either at the suit of the government or employer could not issue," 85 Law Ed. 422, 61 S. Ct. 463, 464.

In the Hutcheson case the concrete question was whether the use of conventional peaceful activities by a union in controversy with a rival union over certain jobs, is a violation of the Sherman Law for which an indictment would lie. The majority and dissenting opinion discussed the ques-

tion only in such premises. It is apparent the *Hutcheson* case is without any application to the record in the case at bar.

IX.

The Question Involved Herein Is of Such Paramount Public Importance and Interest as to Call for an Exercise of This Court's Power of Supervision Over the Cause.

This case presents a question of very great importance to the public and to all business and other interests, whether large or small, because of the extended application the court of appeals in this case gave to the term "labor dispute" as defined in the Norris-La Guardia Act. If the rule announced by the court of appeals in its opinion is sound and correct under the facts found to exist in this case, it then necessarily follows that the rule announced in *United States v. Hutcheson* is so extended as to prevent the civil enforcement of any of the provisions of the Anti-Trust Law relating to monopoly and fixing prices in commodities moving in Interstate Commerce. And further, the interest of the public in the question presented cannot be better stated than as expressed by United States District Judge McColloch in his opinion deciding this case in the District Court as follows:

"I ask this question in behalf of the consuming public whose interests are paramount in determining any controversy arising under the Anti-Trust Laws (Paramount Famous Lasky Corporation, et al v. United States, 1930, 282 U. S. 30, 51 S. Ct. 42, 75 L. Ed. 145) :

"In any year when defendant's members did not 'choose to fish,' how would the consuming public gets its needs of salmon, tuna or other marine products from North Pacific waters? Since the union's contract does not guarantee a supply of fish, where would the canneries get fish, having agreed to look to the union for the sole supply? Surely reasonable men will agree that the public's interest in an important item of food supply should not be put in such jeopardy. If an exclusive and monopolistic arrangement, as here insisted upon, can be legally made as to fish, it can be made as to milk, as to meat, and as to other necessities of life." (Columbia River Packers Ass'n. v. Hinton, 84 Fed Supp. 970 975).

In view of the foregoing consideration the writ of certiorari should issue as prayed for.

Respectfully submitted,

JAY BOWERMAN,

RALPH E. MOODY,

Attorneys for Petitioner.

FILE COPY

Office - Supreme Court, U. S.

FILED

DEC 16 1941

CHARLES ELMORE CROPLEY
CLERK

No. 142

In the

Supreme Court of the United States

October Term, 1941

COLUMBIA RIVER PACKERS ASSOCIATION, Inc., a corporation, *Petitioner*,
vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS,
LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN,
NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL,
HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WIL-
LIS KOOGLE, LEO LYSER, LYLE LYSER, LAWRENCE NOEL, GARTH
PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON,
CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S
UNION, its officers and members, *Respondents*.

Petitioner's Reply Brief

JAY BOWERMAN,
Yeon Bldg., Portland, Oregon.

RALPH E. MOODY,
Guardian Building, Salem, Oregon
Attorneys for Petitioner

LEE PRESSMAN,
1106 Connecticut Avenue, Northwest, Washington, D. C.

BEN ANDERSON,
Guardian Building, Portland, Oregon
Attorneys for Respondents

SUBJECT INDEX OF REPLY BRIEF

	<i>Page</i>
Pacific Coast Fishermen's Union Created and Maintained a Monopoly, and Fixed the Prices for the Products in the Fish Industry moving in Interstate and Foreign Commerce	7
Question Presented	7
Reference to Respondents' Cases	1
Respondents Marks and Chase are fish dealers and are not fishermen, nor members of Pacific Coast Fishermen's Union. Respondents, Pacific Coast Fishermen's Union and its member fishermen and said dealers conspired and contracted to monopolize Interstate and Foreign Commerce in fish and other marine products	6

TABLE OF CASES

	<i>Page</i>
Apex Hosiery Co. v. Leader, 310 U. S. 469, 492-493, 500	7
International Assoc. etc. v. Pauly Jail Bldg. Co., 118 Fed. 2nd. 615, 621. (Concurring opinion—Judge Woodrough)	6
Lauf v. E. G. Shinner & Co., 303 U. S. 323	2
Manaka v. Monterey Sardine Industries, Inc. (D.C. N.D. California)— Decided by Judge Fee Oct. 24, 1941—not yet published	6
Milk Wagon Drivers' Union et al v. Lake Valley Farm Products, Inc., et al 311 U. S. 91	2, 3
New Negro Alliance v. Grocery Co., 303 U. S. 552	2, 3
United States v. Assoc. Plumb. & H. Merchants, 38 Fed. Supp. 769, 770 (D. C. W.D. Washington, N.D.)	6
United States v. Brims, 272 U. S. 549	5
United States v. Central Supply Assoc. (D.C. N.D. Ohio, E.D.) 40 Fed. Supp. 964, 965, Adv. Sheet No. 7	6
United States v. Hutcheson, et al, 61 Sup. Ct. Rep., 312 U. S. 219, 227	2, 4, 5
United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 212-224	7

STATUTES

United States Code Annotated, Title 15, Section 1	4
---	---

No. 142

In the
Supreme Court
of the United States

October Term, 1941

COLUMBIA RIVER PACKERS ASSOCIATION, INC., a corporation, *Petitioner*,
vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT, CHARLES J. MACKIE,
GLENN MURDOCK, FERDINAND SANDNESS, P. J. BARTON, JACK CURTIS,
LEROY CHENOWITH, WALTER WEAVER, O. TANNER, O. H. BROWN,
NEWTON CANNON, WM. SCHOLTENS, ROY REAVIS, ARTHUR HERTEL,
HARRY ANSAMA, JACK ANSAMA, J. W. BEECROFT, HENRY BOYE, WIL-
LIS KOOGLE, LEO LYSER, LYLE LYSER, LAWRENCE NOEL, GARTH
PHILLIPS, CARL PYRTZ, W. A. PYRTZ, ANDY TOPPI, CHARLES PILTON,
CHARLES MARKS, CLYDE CHASE and PACIFIC COAST FISHERMEN'S
UNION, its officers and members, *Respondents*.

Petitioner's Reply Brief

REFERENCE TO RESPONDENTS' CASES

Respondents, on page 7 of their brief state that the decision of the Court of Appeals in the case at bar, decided a question which has heretofore been settled by this court and there is no conflict with applicable deci-

sions of this court and in support of such contention respondents cite the following cases:

Lauf v. E. G. Shinner & Co., 303 U. S. 323.

New Negro Alliance v. Grocery Co., 303 U. S. 552.

United States v. Hutcheson, et al, 61 Supreme Court Reporter 463.

Milk Wagon Drivers' Union, et al. v. Lake Valley Farm Products, Inc., et al., 311 U. S. 91.

These cases cited by respondents have no application to the record of the case at bar.

The Lauf case involved a controversy wherein a labor union was carrying on a picketing campaign in an endeavor to force the employees of an employer to leave their own union and join the union of the demanding organization.

The court held such controversy involved a labor dispute under the laws of Wisconsin, the state in which the controversy arose and as defined by the Federal Norris-La Guardia Act and because thereof the Federal Courts were without jurisdiction to issue an injunction.

The case at bar does not involve a labor union or organization, nor does it involve a labor dispute.

The only question involved in the case at bar is the legal effect of an agreement creating and maintaining

a monopoly and fixing prices of commodities moving in interstate and foreign commerce.

The New Negro Alliance case involved a controversy wherein an organization composed of colored persons were demanding an employer to engage and employ colored persons in managerial and sales positions in the new and various other stores of such employer.

This court held such controversy to be a labor dispute within the meaning of the Norris-LaGuardia Act.

The case has no application to the record of the case at bar.

The opinion of the Court of Appeals in the case at bar says:

"New Negro Alliance v. Grocery Co. supra, is distinguishable on its facts, there the controversy was over the race of the people whom the company might or did employ.

"Here, no such controversy was present, because appellee did not 'employ' persons as that word is used in the strict sense." (R. 152 Appendix P. 6 to Petition for Writ of Certiorari)

In Milk Wagon Drivers' Union case, this court found that the persons classified as "vendors," "were actually regarded as employees of the plaintiff dairies." (311 U. S. 91, 98)

4

This court further said (311 U. S. 91, 98, 99, 100) :

"Whether rightly or wrongly, the defendant union believed that the 'vendor system' was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. * * *

"Nor does the controversy cease to be a labor dispute, as the Circuit Court of Appeals thought, because the plaintiff dairies 'employees' became organized. This merely transformed the defendant's activities from an effort to organize non-union men to a conflict which included a controversy between two unions. A controversy 'concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment' is expressly included within the definition of a labor dispute in the Norris-La Guardia Act."

The record in the 'Drivers' Union case is not in any way comparable to the record in the case at bar.

The Hutcheson case, in the first paragraph of its opinion, presents the issue that was involved in that case, stated as follows: (312 U. S. 219, 227)

"Whether the use of conventional peaceful activities by a union in controversy with a rival union over certain jobs is a violation of the Sherman Law, Act of July 2, 1890, 26 Stat., 209, as amended, 15 U.S.C., Section 1, is the question. It is sharply presented in this case because it arises in a criminal prosecution. Concededly an injunction either at the suit of the government or the employer could not issue."

Respondents' can find neither aid nor sanction in the Hutcheson case where it is to be noted on page 232 of the majority opinion, the court observed:

"So long as a union acts in its self-interest and does not combine with non-labor groups, (Citing in note 3 U.S. vs. Brims 272 U.S. 549) the licit and the illicit under section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

And again the majority opinion on page 233 further stated:

"Clearly, then, the facts here charged constitute lawful conduct under the Clayton Act unless the defendants cannot invoke that Act because outsiders to the immediate dispute also shared in the conduct."

The Hutcheson case has been cited as authority that where labor unions combine upon objects outside of the field of labor relations, "the area of economic conflict" (Hutcheson case, 61 S. Ct. at page 465); or "combine with non-labor groups" (page 466) to effect the objects at which the Anti-Trust laws are directed, then, and then only, do they become amenable to the provisions thereof.

International Association, etc. v. Pauly Jail Bldg. Co., 118 Fed. 2nd. 615, 621. (Concurring opinion—Judge Woodrough)

Manaka v. Monterey Sardine Industries, Inc., (D. C. N. D. California)—Decided by Judge Fee Oct. 24, 1941—not yet published.

U. S. v. Central Supply Assoc., (D. C. N. D. Ohio, E. D.) 40 Fed. Supp. 964, 965, Adv. Sheet No. 7.

U. S. v. Assoc. Plumb. & H. Merchants, 88 Fed. Supp. 769, 770. (D. C. W. D. Washington, N.D.)

Respondents, exclusive of Charles Marks and Clyde Chase and Pacific Coast Fishermen's Union, are fishermen, who are directly employed by no one; but are producers and independent contractors, who fish when and where they choose and dispose of their fish to whomever they select, limited only by voluntary agreement among themselves as member of the respondent, Pacific Coast Fishermen's Union. (Finding of Fact II, R. 55-56).

The respondents Charles Marks and Clyde Chase are not fishermen, and are not members of Pacific Coast Fishermen's Union, but each is a fish buyer operating under an exclusive contract with the Pacific Coast Fishermen's Union, whereby they are obligated to purchase no fish from anyone not a member of said union. (Finding of Fact XVIII, R. 71-72-73-74).

No labor dispute is involved herein. (Findings of Fact II R 55-56 XIV, R 65-66 XX, XXI, XXII R 75-76)

QUESTION PRESENTED

The question presented herein is set forth in the petition for writ of Certiorari on pages 3 to 5 thereof.

**PACIFIC COAST FISHERMEN'S UNION
CREATED AND MAINTAINED A MONOPOLY
AND FIXED THE PRICES FOR THE
PRODUCTS IN THE FISH INDUSTRY MOVING
IN INTERSTATE AND FOREIGN COMMERCE.**

Findings of Fact II (R 55-56) VI, VII (R 58-60) and X to including XXXVII (XX) (R 62-88)

Such monopoly and price fixing arrangement is in violation of the Sherman Act and its amendments.

U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150, 212-224.

Apex Hosiery Co. v. Leader, 310 U. S. 469, 492-493, 500.

and cases cited on pages 5-6 of Petitioner's Brief in support of Writ of Certiorari.

The Judgment and Decree of the Circuit Court of Appeals should be reversed and the Judgment and Decree of the District Court affirmed.

Respectfully submitted,

JAY BOWERMAN

RALPH E. MOODY,

Attorneys for Petitioner

FILE COPY

CHARLES ELAIDE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
A CORPORATION,

Petitioner,

vs.

H. G. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
ET AL.

PETITIONER'S REPLY BRIEF.

JAY BOWERMAN,
RALPH E. MOODY,
Counsel for Petitioner.

INDEX.

	Page
Monopoly and price-fixing arrangement of respondents violates Federal Anti-Trust Laws	9
No labor dispute involved	6
Petitioner did not lease boats to fishermen	1
Plaintiff does no fishing itself	4
Reason for the suit	5
The Fishing Industry Act does not exempt respondents from the provisions of the Anti-trust Acts	9

TABLE OF CASES.

<i>Allen Bradley Co. et al. v. Local Union No. 3 International Brotherhood of Electrical Workers</i> (U. S. Dis. Ct. N. Y.), 41 Fed. Supp. 727, 744-750 Advance Sheet No. 6, December 29 1941	9
<i>United States v. Borden Co.</i> , 308 U. S. 188	9

STATUTES.

Act June 25, 1934, 48 Stat. 1213-1214, Relating to Fishing Industry, Sections 521-522, Tit.-15, U. S. C. A.	9
Norris-LaGuardia Act, March 23, 1932, c. 90, 47 Stat. 70-73, Sections 101-114, Tit. 29, U. S. C. A.	10
Anti-Trust Laws, Sections 1-26, Tit. 15, U. S. C. A., 1940 Cu. Ann. Pocket Part. (July 2, 1890, 26 Stat. 209, 50 Stat. 693; October 15, 1914, 38 Stat. 730) ..	9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
A CORPORATION,

Petitioner

vs.

H. G. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
ET AL.

PETITIONER'S REPLY BRIEF.

The brief of respondents filed in this Court on the — day of December, 1941, evidences a misconception of the record herein in important respects. The main contentions of respondents in such brief, the argument made, the citation of cases, and other legal references in support thereof are based upon an erroneous view of the record, therefore not applicable to the issues and record in the case at bar.

Petitioner Did Not Lease Boats to Fishermen.

Respondents' brief, on page 6, states:

"Among the fishermen from whom the plaintiff procured its fish were five members of the Union who

leased their boats from the petitioner, using power boats heretofore belonging to the petitioner, sold to them by the petitioner under the agreement that said fishermen would sell and deliver their fish caught in the Smith and Umpqua rivers to the petitioner, until the purchased price was paid. In no case had any of these five fisherman paid for the boats. In one case the sale had been consummated and a chattel mortgage taken. (Findings of Fact XIV, XXXIV, R. 65, 84.) (Italics supplied.)

On page 16 respondents in such brief further assert:

“ * * * The fact that the plaintiff employs the device of a *lease* in the operation of its boats does not alter the fundamental control it exercises over the fishermen who work on these boats and deliver their catch to it. * * * ” (Italics supplied.)

Respondents in their brief make several references to the asserted “leasing” of petitioner’s boats to the said five fishermen and from such premises argue and contend that such five fishermen were employees of petitioner.

The record in this case shows that in the original complaint Paragraph 13 (R. 13), the word “leased” as same appears at beginning of line 5, p. 13 of the record, was amended by deleting the word “leased” and substituting the word “sold” and that the word “heretofore” was inserted after the word “boats” in line 4 of said paragraph. These amendments accomplishing the above changes were included in the order of the trial court as the same appears on page 38 of the record.

The above amendment to Paragraph 13 eliminated all reference to the word “lease” applicable to petitioner’s operation and amended this paragraph so that it would read as follows:

“That at least five of said fishermen, who, during the current fishing season have been and were, up to April

29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said areas to the plaintiff, the plaintiff agreeing to pay the full going market price for said fish."

Findings of Fact XIV (R. 65) sustain the foregoing allegations as follows:

"That at least five of said fishermen, who, during the current fishing season have been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said areas to the plaintiff until their purchase price is paid; the plaintiff agreeing to pay the full going market price for said fish."

That the respondents fully understood that the relationship existing between petitioner and the said five fishermen was that of a seller and purchaser and not that of a lessor and lessee, appears from findings of fact of XXXIV (XVII) (R. 84) which finding of fact the respondents specifically asked the Court to find (R. 81) and is as follows:

"That at least five of said fishermen, who, during the current fishing season having been and were, up to April 29, selling their fish to the plaintiff, are using powered boats heretofore belonging to the plaintiff, sold to them by the plaintiff under the agreement that said fishermen will sell and deliver their fish caught in said area to the plaintiff until their purchase price is paid; said purchasers had not paid for said boats, one sale had been consummated and a chattel mortgage had been taken. This purchaser and the other prospective purchasers had been fishing and selling their fish to the plaintiff until required to desist by the Pacific Coast Fishermen's Union and its members, whereupon

they ceased selling fish to the plaintiff, and have not sold fish to the plaintiff since."

That the petitioner is not itself engaged in fishing is shown by finding of fact XXI (R. 75-76) as follows:

"That the plaintiff is not engaged in fishing itself, but purchases fish from fishermen, and at the present time produces a large amount of canned fish from its two processing plants in Alaska, and from its floating cannery the steamship 'Mennon', and produces a large amount of canned fish from its two plants in the state of Washington and its two plants in the State of Oregon, and at the present time provides more than 60% of all of the processed (69) fish produced in the state of Oregon, as well as a very substantial amount of the processed fish produced in the state of Washington, and Alaska.

"As a condition precedent to buying any fish from any member of the Pacific Coast Fishermen's Union, said organization has required and now requires that plaintiff enter into a contract whereby it will purchase no fish from any person not a member of said organization, and the court finds that if such contract had been entered into the plaintiff would have become a party to said plan, scheme and conspiracy of said defendants, and would thus have been guilty of violating the Anti-Trust Laws of the United States."

And also the last sentence of finding XXXIV (XIX) (R. 87) is in the following language, "Plaintiff does no fishing".

The trial court in its oral opinion (R. 39) said:

"Plaintiff Does No Fishing Itself".

That the Pacific Coast Fishermen's Union is composed of fishermen who are producers and independent contractors appears from findings of fact II (R. 55-56), VI, VII (R. 58-60), XV, XVI (R. 66-69), XXI, XXII (R. 75-76),

XXVIII (11) (R. 81-82), XXXV (XVIII), XXXVI (XIX), XXXVII (XX) (R. 85-88).

The foregoing finding and others to the same effect clearly establish that an "employer-employee" relationship is not involved in this case.

Reason for the Suit.

Respondents brief apparently is presented upon the assumption that petitioner, up until the institution of this suit, was a member of the Commercial Fishermen's Association, an organization of packers and dealers of fish and other marine products of the Pacific Coast.

(Respondents brief, page 4.)

This is an incorrect assumption as it appears from the findings of fact, and the opinion of the Court (R. 40).

Near the close of the 1938 fishing season, certain fishermen who were not members of the respondents Pacific Coast Union were refused any market for their fish in the State of Oregon or on the Washington side of the Columbia River. The reason for this closed market was that all packers and dealers including petitioner were parties to contracts with the respondent Pacific Coast Fishermen's Union in which contracts the packers and fish dealers agreed not to purchase fish from any fishermen not members of the Pacific Coast Fishermen's Union.

This resulted in a threat by these non-member fishermen that they would institute civil and criminal proceedings against the petitioner and the other parties to said contracts for violating the Federal anti-trust law. The then existing contracts expired at the close of the 1938 fishing season.

The petitioner refused to enter into a new contract containing this exclusive feature for the year 1939 and shortly prior to instituting this suit, petitioner withdrew from membership in the Commercial Fishermen's Association.

(Findings of fact XII (R. 62-64) XVI, XVII, XVIII (R. 67-74.)

When petitioner refused to execute the exclusive contract for the year 1939, respondents by threats of fines, intimidations and coercion (R. 63-84) caused all fishermen in said waters to cease selling any fish to petitioner although the fishermen were willing to continue making said sales (R. 62-84).

The respondents on page 8 of their brief refer to the court's finding No. XIX (R. 74) that there is an open competitive market for fish along the coast of California, Oregon, Washington and Alaska.

This market resulted from the refusal of petitioner to join the respondents in their conspiracy to continue the monopoly of this market through the said exclusive contract (R. 71-75).

No Labor Dispute Involved.

It clearly appears from finding of fact II (R. 55-56), XIV (R. 65-66), XX, XXI, XXII (R. 75-76), that no labor dispute is involved in this cause and that the Norris-LaGuardia Act is without application to the issues or record in the case at bar.

Finding of fact XVIII (R. 71-74) is pertinent and important. It reads as follows:

"During said years (1936-1937-1938), said defendant Pacific Coast Fishermen's Union had procured contracts with all of the buyers of fish located in the state of Oregon, and along the Columbia River in the State of Washington whereby the buyers would not purchase fish from anyone not a member of said organization, and said Pacific Coast Fishermen's Union induced the signing of said contracts by the threat that it would prevent all of its members from dealing with any buyers unless (66) he executed a contract containing such exclusive features. That by the terms of said contracts

neither said Pacific Coast Fishermen's Union, nor any of its members, undertook any obligation whereby any members of the said Pacific Coast Fishermen's Union would fish, or sell any fish to anyone, but said contracts, as interpreted by both parties thereto, expressly prohibited the buyer from purchasing from anyone not a member of said Pacific Coast Fishermen's Union, and as hereinabove found and determined, said organization, through its membership controlled 90% or more of the troll fishermen, and in areas 100% of all fishing. Its control of the Umpqua River and Smith River was and is complete and said area produces more than one million pounds of fish per annum."

That the exclusive feature of the contract entered into in 1936, 1937 and 1938 by the Pacific Coast Fishermen's Union and its members, and all, or practically all of the buyers of fish in Oregon and/or Coast points in the State of Washington, and in California as far south as Crescent City, is substantially the same as the contract demanded by said Pacific Coast Fishermen's Union and its members for the year 1939, which is as follows:

"That it is further understood by all parties herein that the union members shall not be required to work with and/or alongside non-Union employees."

It was admitted by the plaintiff, and the principal officers of the defendant Pacific Coast Fishermen's Union while on the witness stand, that said language means that no buyer signing said contract is permitted to purchase any fish from any person not a member of said Pacific Coast Fishermen's Union.

The defendant Leroy Chenowith is secretary of the Reedsport local of the defendant Pacific Coast Fishermen's Union and a member of its organization committee and active in its affairs. The defendant Walter Weaver is also a member of said organization and of said Reedsport local,

and is a member of the managing committees of said local organization.

The defendant Charles Marks and defendant Clyde Chase are not fishermen and are not members of the Pacific Coast Fishermen's Union, but each is a fish buyer operating, and each having a place (67) of business at the mouth of the Umpqua River. Each has his own plant and is an extensive buyer of fish from fishermen belonging to defendant Pacific Coast Fishermen's Union.

The defendant Chenowith works for the defendant Chase as a buyer and receiver of fish, but the plant is non-union and no union men work for defendant Chase, except the defendant Chenowith.

The defendant Weaver buys fish for Banks & Cole, another non-union fish dealer.

Defendant Marks, in his fish operations, conducts a non-union shop and buys his fish from the members of Pacific Coast Fishermen's Union.

That said Marks, Chase, and Banks & Cole, since the defendant Pacific Coast Fishermen's Union ordered its members to refrain from selling fish to the plaintiff, have been paying 2¢ for male shad, 20¢ for female shad, and 9¢ per pound for salmon; and at the same time, and in the same market, the plaintiff has been paying 2¢ for male shad, 22¢ for female shad, and 10¢ per pound for salmon, notwithstanding which fact, the defendant Pacific Coast Fishermen's Union has been able to, and has prevailed upon its members (with the exception of approximately fifteen) to sell their fish to Banks & Cole, and to defendants Marks and Chase, and defendants Marks and Chase have entered into a contract with the Pacific Coast Fishermen's Union containing said exclusive clause, whereby they agree not to purchase from any person not a member of said organization."

From such finding it follows that the respondents Pacific Coast Fishermen's Union in its conduct to force the execution of the exclusive provision of the contract was not endeavoring to carry out the principles and policy of the Norris-LaGuardia Act, but had the motive and purpose of creating and maintaining a monopoly and fixing the prices of the product in the fish industry in Alaska, Oregon, Washington and California.

The Fishing Industry Act Does Not Exempt Respondents from the Provisions of the Anti-Trust Acts,

The trial court found (R. 75, 89-90) that the Pacific Coast Fishermen's Union substantially conforms to Sec. 521 and 522 title 15 U. S. C. A. and held that that fact neither exempted or excluded its activities from the operation or provisions of the Anti-Trust Acts and such ruling is in accordance with the decision of this Court in *United States v. Borden Co.*, 308 U. S. 188.

Monopoly and Price Fixing Arrangement of Respondents Violates Federal Anti-Trust Laws.

That the monopoly and price fixing arrangement of the respondents is a violation of the Federal Anti-Trust Laws is established by the decisions of this Court cited on pages 5 and 6 of petitioners brief in support of the petition for Certiorari and on page 7 petitioners first reply brief, and to the cases cited and referred to in *Allen Bradley Co. et al. v. Local Union No. 3 International Brotherhood of Electrical Workers et al.* (U. S. Dis. Ct. N. Y. decided September 30, 1941) 41 F. Supp. 727, 744-750 Advance sheet No. 6 December 29, 1941.

The respondents' argument the petitioner is not entitled to injunctive relief because of the provisions of the Norris-LaGuardia Act is untenable.

The scope of the Norris-LaGuardia Act is limited by Title 29, Section 102 U. S. C. A., in which the public policy of the U. S. C. A. is defined in substance as follows:

"Whereas under the prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor * * *". (Italics supplied.)

In their interpretation of Section 13 appears to be contended that because the petitioner and the respondents, Marks and Chase and all of the other respondents are engaged in the common industry of fishing and fish processing, that the Norris-LaGuardia Act withdraws the right to an injunction in any and every controversy.

Because the petitioner and all of the respondents are engaged in the fishing business, it is argued that injunctive relief in any kind of a case must be denied to them in the Federal Court because of the supposed meaning of the Norris-LaGuardia Act.

It is our contention that Subsection a and b of section 13 are limited by the provisions of Sub-section c and that the words, "labor dispute" have no different meaning in Section 13 than they have in any other ordinary use.

There being no relationship of employer and employee, there being no employment of anyone, there can be no labor dispute. Under the findings of fact in this case, there was no labor dispute either within the meaning of the Norris-LaGuardia Act or otherwise.

The Judgment and Decree of the Circuit Court of Appeals should be reversed and the Judgment and Decree of the District Court should be affirmed.

Respectfully submitted,

JAY BOWERMAN,

RALPH E. MOODY,

(8190)

Attorneys for Petitioner.



RESPONDENT'S BRIEF IN OPPO - SITION



Office - Supreme Court
FILED
OCT 14 1941
CLERK OF SUPREME COURT

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
a corporation,

Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
CHARLES J. MACKIE, GLENN MURDOCK, FER-
DINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LEROY CHENOWITH, WALTER WEAVER,
O. TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REAVIS, ARTHUR
HERTEL, HARRY ANSAMA, JACK ANSAMA,
J. W. BEECROFT, HENRY BOYE, WILLIS KOOG-
LER, LEO LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON,
CHARLES MARKS, CLYDE CHASE and PACIFIC
COAST FISHERMEN'S UNION, its officers and
members,

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI

LEE PRESSMAN,
1106 Connecticut Avenue, Northwest,
Washington, D. C.

BEN ANDERSON,
Guardian Building, Portland, Oregon,
Counsel for Respondents.

SUBJECT INDEX

	Page
Reference to Opinions Below.....	1
Jurisdiction	2
Statement of the Case.....	2

TITLE OF CASES, TEXT BOOKS AND STATUTES

CASES

	Page
Lauf v. Shinner & Co., 303 U.S. 323; 82 L. Ed. 872; 58 S. Ct. 578.....	7
Milk Wagon Drivers' Union v. Lake Valley Food Products, 311 U.S. 91; 85 L. Ed. 91; 61 S. Ct. 122	7
New Negro Alliance v. Grocery Co., 303 U.S. 552.	7
United States v. Hutcheson, 61 S. Ct. Reporter 463; 85 L. Ed. 422.....	7

STATUTES

United States Code Annotated, Title 28, Sec. 347.	2
United States Code Annotated, Title 29, Secs. 101-114	6
United States Code Annotated, Title 15, Secs. 521-522	7

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
a corporation,

Petitioner,

vs.

**H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
CHARLES J. MACKIE, GLENN MURDOCK, FER-
DINAND SANDNESS, P. J. BARTON, JACK
CURTIS, LEROY CHENOWITH, WALTER WEAVER,
O. TANNER, O. H. BROWN, NEWTON CAN-
NON, WM. SCHOLTENS, ROY REAVIS, ARTHUR
HERTEL, HARRY ANSAMA, JACK ANSAMA,
J. W. BEECROFT, HENRY BOYE, WILLIS KOOG-
LER, LEO LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A.
PYRTZ, ANDY TOPPI, CHARLES PILTON,
CHARLES MARKS, CLYDE CHASE and PACIFIC
COAST FISHERMEN'S UNION, its officers and
members,**

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI

REFERENCE TO OPINIONS BELOW

This matter is before the court upon petitioner's petition for writ of certiorari, seeking a review of a decision of the United States Circuit Court of Appeals for the Ninth Circuit. Said decision having been rendered March 29, 1941 (Tr. 146-154).

The original decision of the District Court of the United States for the District of Oregon rendered on June 14, 1939, is contained in *Columbia River Packers Assn. v. Hinton*, 34 Fed. Supp. 971.

JURISDICTION

Petitioner invokes the jurisdiction of this court under Section 240(a) of the Act of February, 1925, Title 28, Section 347, U.S.C.A.

STATEMENT OF THE CASE

The question in this case is whether or not this court should grant a writ of certiorari and review the decision of the United States Circuit Court of Appeals for the Ninth Circuit, rendered in the within cause on the 29th day of March, 1941.

The Circuit Court of Appeals tried the case on the record which did not contain a transcript of testimony, but the facts of the case are disclosed by the extensive findings of fact entered by the trial court. (Tr. 54)

Petitioner is engaged in the fishing industry, and under the authority of its charter is engaged in catching, purchasing, processing, canning and distributing fish and other marine products. (Tr. 3)

Respondents are organized into a trade association known as "The Pacific Coast Fishermen's Union" (Tr. 7) and constitute a large percentage—more than a majority—of persons engaged in cap-

during fish in the Pacific Ocean and tributaries.
(Tr. 16)

Some of the members of respondents' union were using power boats belonging to petitioner, agreeing to deliver all their catch to petitioner. (Tr. 13) Petitioner furnished certain facilities for defendants, such as net racks, tanning tanks and a mooring place for the convenience of the fishermen involved.

The trial court found that the Pacific Coast Fishermen's Union had bargained for its members with plaintiff and other persons in the industry through 1936, 1937 and 1938, and had established contracts regarding working conditions and had established a closed shop contract in the following language:

"That it is further understood by all parties that the union members shall not be required to work with, and/or alongside non-union employees."
(Tr. 72)

In the spring of 1939 petitioner refused to renew its said contract, all of which gave rise to this controversy.

The court found that the constitution and by-laws of the Pacific Coast Fishermen's Union provide among other things that "the union members shall not deliver catches outside of union agreements." That in inducing said fishermen to decline and refuse to sell fish to petitioner, respondents did not use any threats of force and violence, but the

fishermen who so declined to deliver fish were prompted to do so by reason of the provisions of the constitution and by-laws of the Pacific Coast Fishermen's Union; and by the knowledge that they would be subject to fines and other disciplinary action. (Tr. 83)

The court further found:

"The Pacific Coast Fishermen's Union is an organization of persons engaged in fishing and maintains its principal office at Astoria, Oregon; that it is chartered by the International Fishermen and Allied Workers of America and the Congress for Industrial Organizations; that the Pacific Coast Fishermen's Union issues charters to various local unions in various ports of the states of Washington and Oregon and have issued such charters to persons engaged in fishing at Reedsport, Westport, Coquille, and other Oregon and Washington ports; that it has been the custom of these local unions so chartered to enter into contractual relationships as aforesaid with plaintiff and other packers and buyers.

"The Pacific Coast Fishermen's Union is also a member of the Maritime Federation of the Pacific; the Maritime Federation of the Pacific is a federation of labor organizations so federated within said organizations are the International Longshoremen and Warehousemen's Union, the Alaska Fishermen's Union, the United Fishermen's Union, the Cannery Workers Union, the Marine, Cooks and Stewards Union, the Ships Radio Operators Union, and many other organizations whose membership is engaged in maritime work on the Pacific Coast." (XXXVII (XXI) Tr. 87)

"The Court finds that prior to the organization of the Pacific Coast Fishermen's Union

those engaged in fishing were compelled to sell their products at low prices; that during the period of the recent general depression silver-side salmon on occasions were sold to the packers and buyers as low as one cent per pound, and (77) concurrent therewith the retail price of the same product sold to the public in the same area for 'between 15 and 20 cents' per pound; that it would therefore seem that it is necessary for those engaged in fishing to arrange, by lawful contractual relationships, agreements for the sale of their products prior to taking of the fish and other marine products. There is no evidence offered in this case tending to show that the wholesale or retail prices paid by consumers have been enhanced by the activities of these defendants." (XXXVIII (XXI) Tr. 88)

"The Court finds that plaintiff and other packers and dealers of fish and other marine products have heretofore been organized into an organization called the Commercial Fisheries Association; that said association has throughout its existence bargained with the Pacific Coast Fishermen's Union, and has been the collective bargaining agency for packers and dealers; that shortly prior to the institution of this suit plaintiff withdrew from said organization." (XXXIX (XXII) Tr. 89)

"That defendants Chas. Marks and Clyde Chase own and operate their separate fleets of fishing boats through an arrangement whereby members of the Pacific Coast Fishermen's Union lease boats from these defendants and turn in their catch and are paid the market price for the same; that it has been the custom of the trade for many years past that where the buyer or processor furnished boats as aforesaid it is tacitly understood that such fishermen shall deliver their catch to the buyer or processor owning the boats." (XLIV (XXVII) Tr. 92)

"That for several years past the defendants Charles Marks and Clyde Chase, as well as plaintiff Columbia River Packers Association, have entered into contractual relationships yearly with the Pacific Coast Fishermen's Union, which contracts have provided, among other things,

'That it is further understood by all parties herein that the Union members shall not be required to work with, and/or alongside of non-union employees.'

That during the early part of 1939 the plaintiff refused to enter into such agreement but that defendant Chas. Marks and Clyde Chase did enter into such agreement with defendants. The evidence does not disclose that defendants Chas. Marks and Clyde Chase have committed any overt acts other than entering into said contract with the Pacific Coast Fishermen's Union." (XLV (XXVIII) Tr. 92)

The foregoing findings of fact and a review of the record will disclose that the case involves persons engaged in the same industry, having a direct interest therein; that injunctive relief is sought against these respondents and that the case involves and grows out of a "labor dispute" within the meaning of the Norris-LaGuardia Act, Title 29, Sections 101-114, U.S.C.A.

The transcript of record shows:

(1) That plaintiff's complaint does not meet the procedural requirements of Section 107 of the Norris-LaGuardia Act. Neither are the Court's findings sufficient to support the issuance of an injunction where a labor dispute is involved.

(2) That plaintiff has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of governmental machinery of mediation, and particularly plaintiff has failed to seek any relief in conformity with Sections 521 and 522, Title 15, U.S.C.A., which provides for investigation by the United States Secretary of Commerce whose duty it is to investigate and to hold hearings to determine whether or not practices carried on by fishermen organized in conformity with the Act, are such as to restrain commerce unreasonably, or unduly enhance the price of marine products, and to make such orders as may be appropriate under the circumstances.

(3) That the court issued a blanket injunction, and did not limit the injunction to specific acts, as required by Section 109 of the Norris-LaGuardia Act, where labor disputes are involved,

**THE DECISION OF THE COURT OF APPEALS
IN THE CASE AT BAR DECIDED A QUESTION
WHICH HAS HERETOFORE BEEN
SETTLED BY THIS COURT AND
THERE IS NO CONFLICT WITH
APPLICABLE DECISIONS OF
THIS COURT.**

Lauf v. E. G. Shinner & Co., 303 U.S. 323.

New Negro Alliance v. Grocery Co., 303 U.S. 552.

Unites v. Hutcheson, et al., 61 Supreme Court Reporter 463.

Milk Wagon Drivers' Union, et al. v. Lake Valley Farm Products, Inc., et al., 311 U.S. 91.

Insofar as the application of the Norris-LaGuardia Act is concerned, the case at bar is on all fours with the Milk Wagon Drivers' case, *supra*; both cases present the two questions:

First, does there here exist a "labor dispute" within the meaning of the Act?

Second, if there is a "labor dispute", must the jurisdictional prerequisites of the Act be complied with before injunctive process can be used against a union accused of violating the Sherman Anti-Trust Act?

The Milk Wagon Drivers' case involves "vendors"—persons buying milk from wholesalers and selling and delivering milk to the retail trade.

The case at bar involves fishermen who take fish and other marine products, deliver the same to established packers for processing and sale, each having organized themselves into trade associations or unions; and in the Fishermen's case, have a collective bargaining history of several years' standing.

In the Milk Drivers' Union case, *supra*, the court said:

"The Norris-LaGuardia Act applies to labor disputes between 'persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein'. Here, all of the parties have 'direct or indirect interests' in the production, processing, sale, and distribution of milk. Plaintiffs, who sought the injunction, were four: One was the Chicago local of a C.I.O. union, the Amalgamated Dairy

Workers; two were Chicago dairies whose milk was processed and distributed by members of the C.I.O. union. * * *

"The petition for an injunction rests primarily upon the charge that the defendant union and its officials had entered into a conspiracy to interfere with and restrain interstate commerce in violation of the Sherman and Clayton Acts. It is contended by plaintiffs that the controversy is not a labor dispute within the meaning of the Norris-LaGuardia Act, but is an unlawful secondary boycott of which the purpose is not to unionize the vendors but to obtain for the defendant's employers a Chicago milk monopoly at a sustained high price level, contrary to the Sherman Act. * * *

"Whether rightly or wrongly, the defendant union believed that the 'vendor system' was a scheme or device utilized for the purpose of escaping the payment of union wages and the assumption of working conditions commensurate with those imposed under union standards. To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that therefore there is no 'labor dispute', is to ignore the statutory definition of the term; to say, further that the conditioned abandonment of the vendor system, under the circumstances, was an issue unrelated to labor's efforts to improve working conditions, is to shut one's eyes to the everyday elements of industrial strife. * * *

"The Court of Appeals concluded that the defendants' picketing activities constituted a secondary boycott in violation of the Sherman Anti-Trust Act, and that for the reason regardless of the Norris-LaGuardia Act, the District Court had jurisdiction to grant an injunction even though the case arose out of or involved a labor dispute. In this the Court was in error. * * *

While the Norris-LaGuardia Act is applicable to cases involving labor disputes, regardless of whether or not the relationship of employer and employee exists, it appears from plaintiff's complaint herein that something approaching the relationship of employer and employee exists in this case.

Some of the members of the defendant union were using powered boats belonging to plaintiff, agreeing to deliver all their catch to plaintiff. (Tr. 13) Plaintiff furnished certain facilities for defendants, such as net racks, tanning tanks and a mooring place for the defendants' boats. (Tr. 11)

The collective bargaining history of plaintiff and defendants, and the closed shop provision of the contracts, all of which appertain to the defendants' working conditions, makes it apparent from the face of plaintiff's complaint that a labor dispute is involved.

In *United States v. Hutcheson*, supra, the Court said:

"The Norris-LaGuardia Act removed the fetters upon trade union activities, which according to judicial construction Section 20 of the Clayton Act had left untouched, by still further narrowing the circumstances under which the federal courts could grant injunctions in labor disputes. More especially, the Act explicitly formulated the "public policy of the United States" in regard to the industrial conflict, and by its light established that the allowable area of union activity was not to be restricted, as it had been in the *Duplex* case, to an immediate employer-employee relation. Therefore, whether

trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and Section 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct
* * *

"An indictment may validly satisfy the statute under which the pleader proceeded, but other statutes not referred to by him may draw the sting of criminality from the allegations. Here we must consider not merely the Sherman Law but the related enactments which entered into the decision of the district court.

"To be sure, Congress expressed this national policy and determined the bounds of a labor dispute in an act explicitly dealing with the further withdrawal of injunctions in labor controversies. But to argue, as it was urged before us, that the Duplex case still governs for purposes of a criminal prosecution is to say that the which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison. It would be strange indeed that although neither the Government nor Anheuser-Busch could have sought an injunction against the acts here challenged, the elaborate efforts to permit such conduct failed to prevent criminal liability punishable with imprisonment and heavy fines. That is not the way to read the will of Congress, particularly when expressed by a statute which, as we have already indicated, is practically and historically one of a series of enactments touching one of the most sensitive national problems. Such legislation must not be read in a spirit of mutilating narrowness."

The decision of the Circuit Court of Appeals in the case at bar, we believe, is in conformity with the foregoing authorities. It strikes from the decree

of the lower court, an injunction extremely broad in its scope, an injunction which suppressed and imposed its terms not only upon these respondents but upon its affiliated labor unions, an injunction issued without jurisdiction of the court in that the facts come within the purview of the Norris-La-Guardia Act. The petitioner has not complied with the procedural prerequisites that are essential under said Act, where a labor dispute is involved.

We therefore submit that petitioner's application for writ of certiorari should be denied.

Respectfully submitted,

LEE PRESSMAN,
BEN ANDERSON,

Attorneys for Respondents.

FILE COPY

Office - Supreme Court, U. S.

IN THE

DEC 26 1941

Supreme Court of the United States

OCTOBER TERM, 1941
No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
A CORPORATION,

Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND
SANDNESS, P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O. TANNER, O. H.
BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY
REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK
ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS
KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ,
ANDY TOPPI, CHARLES PILTON, CHARLES MARKS,
CLYDE CHASE AND PACIFIC COAST FISHERMEN'S
UNION, ITS OFFICERS AND MEMBERS,

Respondents.

RESPONDENTS' BRIEF

✓ LEE PRESSMAN,
✓ JOSEPH KOVNER,
✓ ANTHONY WAYNE SMITH,
1106 Connecticut Ave. N.W.
Washington, D. C.

BEN ANDERSON,
Guardian Building,
Portland, Oreg.,

Counsel for Respondents.

INDEX

Subject Index

	PAGE
Opinions Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	2
Statement of Case	3
Summary of Argument	9
Argument:	
I. This is a case growing out of a labor dispute within the meaning of the Norris-LaGuardia Act.....	11
II. The record in this case fails to show any violations of the antitrust laws upon which any relief, injunctive or otherwise, could be granted.....	22
Conclusion	39

Table of Cases Cited

<i>AFL v. Swing</i> , 312 U. S. 321, 61 S. Ct. 568.....	26
<i>Apex Hosiery Company v. Leader</i> , 310 U. S. 469, 60 S. Ct. 982	24
<i>Dark Tobacco Growers Coop. v. Dunn</i> , 150 Tenn. 614, 266 S. W. 308	30
<i>F. F. East Company, Inc. v. United Oystermen's Union, No. 19600</i> , 128 N. J. Eq. 27, 15A (2d) 129.....	26
<i>Edelstein v. Gillmore</i> , 36 F. (2d) 81 2d Cir., cert. den. 280 U. S. 607, 50 S. Ct. 158.....	26
<i>The Elk</i> , 1938 A. M. C. 715.....	16, 20
<i>High Grade Dairies v. Fall City Milk Producers Association</i> , 261 Ky. 25, 86 S. W. 2, 1046.....	30, 33
<i>Kingston Trap Rock Co. v. Local 825</i> , 129 N. J. Eq. 570, 19A (2d) 661	26
<i>Lauf v. E. G. Shinner & Co.</i> , 303 U. S. 323, 58 S. Ct. 758. 17	19

<i>Liberty Warehouse v. Burley Tobacco Growers</i> , 276 U. S. 71, 48 S. Ct. 291.....	21, 29, 30
<i>Liggett & Co. v. Lee</i> , 288 U. S. 507, 53 S. Ct. 481.....	38
<i>Manaka v. Monterey Sardine Industries, Inc.</i> , D. C. N. D. Cal. S. Div. Oct. 20, 1941, 4 Lab. Cases, Pär. 60, 731.....	31
<i>Milk Wagon Drivers Union v. Lake Valley Food Products, Inc.</i> , 311 U. S. 91; 61 Sup. Ct. 122.....	17, 19
<i>Mooney v. Farmers Mercantile & Elevator Co.</i> , 138 Minn. 199, 164 N. W. 804.....	21
<i>McKay v. Retail Automobile Salesmen's Local No. 1067</i> , 16 Cal. (2d) 311, 106 P. (2d) 373, cert. den. 313 U. S. 566, 61 S. Ct. 939.....	26
<i>National Fire Proofing Co. v. Mason Builders Assoc.</i> 2d Cir., 169 F. 259.....	26
<i>National Protective Assoc. v. Cumming</i> , 170 N. Y. 334, 63 N. E. 369, 58 L. R. A. 135.....	26
<i>New Negro Alliance v. Grocery Co.</i> , 303 U. S. 552, 58 S. Ct. 703	19
<i>Olympia Mill Products Assoc. v. Herman</i> , 176 Wash. 338, 29 P. (2) 676	30, 31
<i>Senn v. Tile Layers Protective Union</i> , 301 U. S. 468, 57 S. Ct. 857	19, 26
<i>Tigner v. Texas</i> , 310 U. S. 141, 60 S. Ct. 879.....	37
<i>Tobacco Growers Cooperative v. Jones</i> , 185 N. C. 265, 117 S. E. 174	21, 29
<i>United States v. Borden</i> , 308 U. S. 188, 60 S. Ct. 182.....	34
<i>United States v. Brims</i> , 272 U. S. 549, 47 S. Ct. 169.....	20
<i>United States v. Hutcheson</i> , 312 U. S. 219, 61 S. Ct. 463....	9, 20
<i>United States v. Laffin</i> , 9th Cir., 24 F. (2d) 683.....	16
<i>United States v. Peterson</i> , 7th Cir., 28 F. (2d) 29.....	16
<i>United States v. Rock Royal Coop.</i> , 307 U. S. 533; 59 S. Ct. 993	29, 32
<i>Williams, v. Quill</i> , 277 N. Y. 1, cert. den. 303 U. S. 621, 58 S. Ct. 650.....	26

National Labor Relations Board Decisions

<i>American Scale Co.</i> , 19 NLRB 124.....	18
<i>Cape Cod Trawling Corp.</i> , 23 NLRB 208.....	16
<i>Connor Lumber & Land Co.</i> , 11 NLRB 776.....	18
<i>Daniel Creek & Logging Co.</i> , 13 NLRB 184.....	18
<i>Federal Ice & Cold Storage Co.</i> , 18 NLRB 161.....	18
<i>Federated Fishing Boats of New England and New York, Inc.</i> , 15 NLRB 1080.....	16
<i>Hearst Publications, Inc.</i> , (<i>Los Angeles Examiner Dept.</i>) 25 NLRB 74	18
<i>Houston Chronicle Publishing Co.</i> , 28 NLRB No. 155.....	18
<i>Interstate Granite Corp.</i> , 11 NLRB 1047.....	18
<i>Jalmer Berg</i> , 35 NLRB No. 74.....	18
<i>The Kelly Co.</i> , 34 NLRB No. 156.....	18
<i>KMOX Broadcasting Station</i> , 10 NLRB 479.....	18
<i>Life Insurance Co. of Virginia</i> , 29 NLRB No. 44.....	18
<i>Metro-Goldwyn-Mayer Studios</i> , 7 NLRB 662.....	18
<i>Markham & Callow, Inc.</i> , 13 NLRB 963.....	18
<i>Murphy, Harry, et al.</i> , 37 NLRB No. 80.....	16, 18
<i>Park Floral Co.</i> , 10 NLRB 403.....	18
<i>Phelps-Dodge Corp. Copper Queen Branch, Smelter Division</i> , 34 NLRB No. 103.....	18
<i>Post Standard Co.</i> , 34 NLRB No. 32.....	18
<i>Reichelt, Edw. F., et al.</i> , 21 NLRB 263.....	18
<i>Stark, James E.</i> , 33 NLRB No. 185.....	18
<i>Seattle Post-Intelligencer Dept. of Heart Publications</i> , 9 NLRB 1262	18
<i>Sun Life Ins. Co.</i> , 15 NLRB 817.....	18
<i>Stockholders Publishing Co.</i> , 28 NLRB No. 151.....	18
<i>Supreme Liberty Life Insurance Co.</i> , 32 NLRB No. 18.....	18
<i>Theurer Wagon Works, Inc.</i> , 18 NLRB 837.....	18

	PAGE
<i>Trawler Maris Stella, Inc.</i> , 12 NLRB 415.....	16
<i>Twentieth Century Fox Films</i> , 32 NLRB No. 130.....	18
<i>Yasek, John</i> , 37 NLRB No. 20.....	18

Statutes

Fair Labor Standards Act (Act of June 25, 1938, c. 376, 52 Stat. 1060, 29 U. S. C. Sec. 201-219).....	18
Fishermen's Cooperative Act (Act of June 25, 1934, c. 742, 47 Stat. 1213, 15 U. S. C. Secs. 521, 522).....	2, 27
National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 151-166).....	15
Norris-LaGuardia Anti-Injunction Act (Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. Sec. 101 et seq.)....	2, 12, 13
Sherman and Clayton Antitrust laws (Act of July 2, 1890, c. 647; and Act of Oct. 15, 1914, c. 323, 15 U. S. C. Secs. 1, 2, 7, 12, 14, 15, 17).....	2, 29

Miscellaneous

Congressional Record:	
Vol. 78, p. 9175.....	28
Vol. 78, p. 10745.....	28
Vol. 78, p. 12421.....	28
House Report No. 1504, accompanying H. R. 9233, 73d Cong. 2d Sess.....	27
I. J. A. Bulletin, <i>The All Union Shop in the Courts</i> , Vol. 6 (June 1938) p. 147.....	26
U. S. Dept. of Labor, <i>Earnings and Methods of Payment in the Fishing Industry</i> , <i>Monthly Labor Review</i> (Sept. 1936)....	20
<i>Wage-Hour Release</i> , No. 928, July 27, 1940.....	18

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
A CORPORATION,

Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND
SANDNESS, P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O. TANNER, O. H.
BROWN, NEWTON CANNON, WM. SCHOLTENS, ROY
REAVIS, ARTHUR HERTEL, HARRY ANSAMA, JACK
ANSAMA, J. W. BEECROFT, HENRY BOYE, WILLIS
KOOGLER, LEO LYSTER, LYLE LYSTER, LAWRENCE
NOEL, GARTH PHILLIPS, CARL PYRTZ, W. A. PYRTZ,
ANDY TOPPI, CHARLES PILTON, CHARLES MARKS,
CLYDE CHASE AND PACIFIC COAST FISHERMEN'S
UNION, ITS OFFICERS AND MEMBERS,

Respondents.

RESPONDENTS' BRIEF

OPINIONS BELOW

The opinion of the United States District Court for the District of Oregon is reported in *Columbia River Packers Association v. Hinton*, 34 F. Supp. 971, and also appears in the Record at pages 43-47. The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in *Hinton v. Columbia River Packers Asso-*

ciation, 117 F. (2d) 310, and also appears in the record at pages 145-155.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under Section 240 (a) of the Act of February 13, 1925, Title 28, section 347, U. S. C. A. The petition for certiorari was granted by this Court on October 20th, 1941.

STATUTES INVOLVED

This case involves three statutes of the United States, namely:

- (1) Norris-LaGuardia Anti-Injunction Act
(Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. Sec. 101 et seq.)
- (2) The Sherman and Clayton Antitrust laws
(Act of July 2, 1890, c. 647; and Act of Oct. 15, 1914, c. 323, 15 U. S. C. Secs. 1, 2, 7, 12, 14, 15, 17)
- (3) The Fishermen's Cooperative Act
(Act of June 25, 1934, c. 742, 47 Stat. 1213, 15 U. S. C. Secs. 521, 522)

QUESTIONS PRESENTED

- (1) Whether or not this is a case arising out of a labor dispute within the meaning of the Norris-LaGuardia Act;
- (2) Whether or not the bill of complaint and findings of fact show a cause of action for any relief under the antitrust laws.

STATEMENT OF CASE

Proceedings in this case were instituted upon a complaint filed on May 4th, 1939, in the federal District Court of the District of Oregon seeking treble damages, declaratory and injunctive relief under the antitrust laws against the respondents. It appears from the record that a temporary restraining order was issued by the District Court. (Findings of Fact XIII, XLI, R. 64, 90) After hearing, the Court entered a decree awarding damages, adjudging certain contracts of the respondents to be unlawful, and granting a permanent injunction prohibiting any interference by the respondents with the business of the petitioner. (R. 106-111)

The complaint was amended to conform to the evidence. (R. 47-50). The petitioner waived damages and the decree was amended accordingly. (R. 121-124)

Upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the Court reversed the decree of the District Court and remanded it to the District Court for further proceedings in accordance with its opinion (R. 154-155), whereupon the petitioner filed its writ of certiorari in this Court. In the meantime, and up until the present time, the decree of the District Court is in effect. (R. 156)

The record in this case consists of the complaint and answer, the opinion of the District Court, its findings of fact, conclusions of law and decree, and the opinion of the Circuit Court of Appeals. From this record the following facts appear.

The petitioner is an Oregon Corporation having its principal place of business at Astoria, Oregon, and is engaged in the purchasing, processing, canning, and distribution of fish and other marine products taken from

the Pacific Ocean and adjacent waters. It distributes its products in the various states and territories of the United States and in foreign countries. (Findings of Fact I-V incl., R. 54-58)

The petitioner provides ~~more than~~ 60% of all of the processed fish produced in Oregon, as well as a very substantial amount of the processed fish produced in Washington and Alaska. (Findings of Fact XXI, R. 76) It is engaged in commerce among the several states and foreign nations. For some time in the past and up until the institution of this suit, the petitioner had been a member of the Commercial Fisheries Association, which is an organization of packers and dealers of fish and other marine products on the Pacific Coast. (Findings of Fact XXXIX, R. 89)

The respondent, Pacific Coast Fishermen's Union, hereinafter, referred to as the Union, is an unincorporated association of fishermen, formed in 1932, originally of troll fishermen, fishing in the international waters opposite the states of Oregon, Washington and California, and the Territory of Alaska. At the time of the complaint, it had assumed jurisdiction from Alaska to as far south as Crescent City, California. (Findings of Fact XV, XVI, R. 66-67)

The individual respondents, except Charles Marks and Clyde Chase, are members and officers of the Union. Hinton and Bambrick are, respectively, president and secretary of the union. Chenowith and Weaver are officers of the Umpqua Local of the Union. (Findings of Fact VI, R. 58-59) The respondents, Marks and Chase are, like the petitioner, fish dealers and processors. (Findings of Fact XLIII, R. 91)

The issues in this case revolve about the relations between the fishermen, their union, and the petitioner,

especially during the 1939 fishing season for shad in the Smith and Umpqua rivers at Oregon. These waters are one of the principal sources of the supply of shad and may be fished during a sixty-day period each year beginning April 20th. (Findings of Fact VIII, IX, R. 61)

Since its formation, the Union has functioned as a collective bargaining agency for the fishermen. It has entered into contractual relationship with the petitioners and other fish processors. These contracts made on a local basis, recognize the Union as the bargaining agency and provide for the prices to be paid for various kinds and grades of fish. In addition, these contracts usually carried a clause providing as follows:

"It is further understood by all parties herein that the Union members shall not be required to work with and/or alongside of non-union employees."

It is agreed that this language means in substance that within the local area where such contracts are made, no buyer signing them, is permitted to purchase fish from any person not a member of the Union, or to service and ice boats of such non-member persons. (Findings of Fact XXXVI, XLV, R. 87, 92)

The constitution and by-laws of the Fishermen's Union provide that

"Union members shall not deliver catches outside of Union agreements." (Findings of Fact XLVI, R. 83, 93)

Up until the institution of the suit, such agreements had been procured with substantially all of the buyers of fish located in the State of Oregon and along the Columbia River in the State of Washington. (Findings of Fact XVIII, R. 71)

It was not disputed that the Union had in its membership 100% of the fishermen in the area of the Smith and Umpqua rivers and 90% of the troll fishermen along the Pacific Coast, exclusive of the Columbia River and its tributaries. (Findings of Fact XVI, R. 67) But it was also found that the opening of new fishing grounds for albacore was bringing a great infusion of new fishermen and the Union wished to reserve this fishing for its members. (Findings of Fact XLVI, R. 93)

The fish catching industry from which the Union draws its membership is composed of three types of individuals. There are fishermen who own their own boats and equipment; there are fishermen who lease their boats and equipment; and there are fishermen who work as crews on the boat. Powered boats are used and a supply of ice and food is taken aboard at the beginning of the voyage which usually lasts from three days to two weeks, and which is concluded by returning to a fish station where the fish are sold and delivered at the established prices. The fish are caught with hooks and lines. (Findings of Fact XXXV, R. 85)

Among the fishermen from whom the plaintiff procured its fish were five members of the Union who leased their boats from the petitioner, using power boats heretofore belonging to the petitioner, sold to them by the petitioner under the agreement that said fishermen would sell and deliver their fish caught in the Smith and Umpqua rivers to the petitioner, until the purchased price was paid. In no case had any of these five fishermen paid for the boats. In one case the sale had been consummated and a chattel mortgage taken. (Findings of Fact XIV, XXXIV, R. 65, 84)

Similarly, the respondent fish dealers, Marks and Chase, owned and operated separate fleets of fishing

boats under arrangements whereby members of the Union leased these boats upon the understanding that they would deliver their catch to the owners. (Findings of Fact XLIV, R. 92)

The controversy arose when the petitioner, at the opening of the 1939 fishing season in the Umpqua area, withdrew from the Commercial Fisheries Association, and refused to sign the agreement with the Union. The petitioner was willing to accept every other provision of the agreement with the Union, with the exception of the exclusive buying clause. There was no other controversy between the plaintiff and the Union or any of its members over the price of fish to be paid, or the price of ice, or other supplies to be sold, or any other matter entering into transactions between the petitioners and any of the respondents save and except only the requirement by the Union and its members that the exclusive contract be entered into. (Findings of Fact XXII, R. 76)

Upon the refusal of the petitioner to enter into such agreement, the Union notified its members that they were not to deliver any fish to it. The Union did not use any fraud or violence. (Memorandum opinion, R. 41) The only pressure exercised was that Union members who failed to abide by the provisions of their organization would be subject to fines and other disciplinary action. (Findings of Fact XXXII, R. 83)

From April 20th to April 29th the petitioner was able to secure fish. But upon the action by the union, all fishermen in the Umpqua and Smith rivers refused to sell fish to the petitioner, until the Union was prevented from carrying on its economic pressure against the petitioner by the temporary restraining order, subsequently made permanent and now in effect. (Findings of Fact XI, XII, XIII, R. 62-65)

In addition, the Union induced other unions of maritime workers to refuse to man the ships of the plaintiff. (Findings of Fact XLVII, R. 94) The Union is affiliated with the Maritime Federation of the Pacific which includes other labor organizations such as the International Longshoremen and Warehousemen's Union, Alaska Fishermen's Union, United Fishermen's Union, Cannery Workers Union, Marine, Cooks and Stewards Union, and Ships Radio Operators Union. (Findings of Fact XXXVII, R. 88)

Four important findings were made by the District Court:

(1) That there is an open and competitive market for fish and other marine products at the Umpqua River and also along the seaports of the Pacific Coast. (Findings of Fact XIX, R. 74); (2) that the Union keeps its charter open and will admit to membership any bona fide fishermen engaged in catching fish in the rivers of, and in the Pacific Ocean adjacent to, the states of Washington and Oregon, so long as such persons are of good moral character and will abide by the constitution and by-laws of the Union requiring exclusive membership therein (Findings of Fact XLVIII, R. 95); (3) that the Union is willing to sign the exclusive agreement with any and all of the fish dealers including the petitioner and to permit its members to deliver fish to the petitioner upon the terms of the agreement (Findings of Fact XII, R. 62); and (4) that there is no evidence tending to show that the wholesale and retail prices paid by consumers have been enhanced by the activities of the defendants. (Findings of Fact XXXVIII, R. 88-89)

The District Court also made sketchy findings of three other instances in past years where the Union had refused to deal with fish buyers who would not accept

exclusive dealings and of one instance where the Union excluded a fisherman who would not give up membership in another organization. (Findings of Fact XVI, XVII, R. 67-70)

Upon these facts, the District Court concluded that none of the fishermen were in an employment relationship with the respondent or any other fish dealer; that the case was not one arising out of a labor dispute within the meaning of the Norris-LaGuardia Act; and that the exclusive contracts, together with the constitution and by-laws of the Union, were intended to create a monopoly in violation of the antitrust laws. (Conclusions of Law, R. 95-104)

The Circuit Court of Appeals, however, ruled that the case did arise out of a controversy over terms and conditions of employment in the fishing industry and that the requirements of the Norris-LaGuardia Act had not been complied with. It thereupon vacated the injunction and remanded the case to the District Court for further proceedings in view of the case of *United States v. Hutcheson*, 312 U. S. 219, 61 S. Ct. 463.

SUMMARY OF ARGUMENT

I

This is a case growing out of a labor dispute within the meaning of the Norris-LaGuardia Act. Notwithstanding alleged violations of the antitrust laws, the Norris-LaGuardia Act applies to labor disputes between persons who are engaged in the same industry, trade, or occupation, or who have a direct or indirect interest therein, regardless of whether or not the disputants stand in the proximate relation of employer and employee. The terms of the decree enjoin the respondents

from doing the very things which the Act protects. The defendants in this case include persons in a direct employer-employee relation with the plaintiff, employees of other employers in the same industry, an association of such employees, certain other employers in the same industry and other persons having a direct interest in the industry. All of these defendants are persons participating in a dispute over terms and conditions of employment and over questions concerning the association and representation of employees in the industry. Independent fishermen not directly employed by the plaintiff, or by other employers in the industry, nevertheless, have a unity of interest with employees as co-workers, promoting a common cooperative venture, in the same industry.

II

The record in this case fails to show any violations of the antitrust laws upon which any relief, injunctive or otherwise, could be granted. All portions of the decree, consisting of declaratory and injunctive relief, are before this Court.

The only issue in this case is whether a combination of fishermen may endeavor to perfect their organization to achieve, through their organization, control over the capture of fish and the delivery thereof to fish dealers. Other issues such as prices or price-fixing, exclusion of competitors, or combinations with non-producers, are not before this Court. The combination of the fishermen into the respondent organization is immune from the antitrust laws, whether it be regarded as a labor union or as a fishermen's cooperative. The immunity of labor organizations seeking all-union conditions throughout an industry is clearly settled.

The federal statute authorizing fishermen's cooperatives, by its legislative history and express terms, favors the complete organization of fishermen into cooperatives. The judicial decisions dealing with producers' cooperatives have given full effect to the same policy and protected exclusive dealings between members and buyers. This case does not involve any illicit combination of producers with other groups, or any specific practices in restraint of trade.

The fundamental issue in this case is this: The plaintiff, a large corporation selling to consumers and buying from fishermen 60% of the fish produced in the state of Oregon and a very substantial amount of the fish produced in Washington and Alaska, is confronted with the economic action of a fishermen's cooperative that has secured 90 to 100% membership among the fishermen, exercising their economic strength to protect their cooperative organization. The plaintiff wants the help of the courts to break the cooperative and to be free to use its own uncontrolled economic power against the disbanded fishermen.

ARGUMENT

I. THIS IS A CASE GROWING OUT OF A LABOR DISPUTE WITHIN THE MEANING OF THE NORRIS-LAGUARDIA ACT.

The Circuit Court of Appeals for the Ninth Circuit held, and it must be conceded, that, despite the alleged violations of the antitrust laws, if this is a case arising out of a "labor dispute," then the District Court did not comply with the jurisdictional requisites of the Norris-LaGuardia Act, and its decree awarding an injunction must be vacated. (R. 149)

The decree in unlimited terms, enjoins the respondents and "all persons in active concert with them" from "in any manner interfering with the legal prosecution by the plaintiff of its business"; from "in any manner interfering with the plaintiff in operating its canneries and other plants and facilities and its steamships, in the loading, unloading, outfitting, dispatching or operating the same or in transporting, loading, unloading, shipping and trans-shipping or otherwise handling, freezing, processing, or selling fish or other marine products or in employing employees in any way connected with the business of the plaintiff anywhere."

The decree thus enjoins the respondents from doing the very things which the Norris-LaGuardia Act protects. It enjoins them from "ceasing or refusing to perform any work or to remain in any relation of employment"; and from "advising, urging or otherwise causing or inducing other persons to cease or refuse to" perform any work or to remain in any relation of employment. [29 U. S. C. Sec. 104 (a) (i)]

Our inquiry then turns to whether the decree is made in a case "involving or growing out of any labor dispute" and prohibits "any person or persons participating or interested in such dispute."

The definitions of "person" and of "dispute" are interdependent; a case involves or grows out of a labor dispute when

"the case involves any conflicting or competing interests 'in a labor dispute' (as hereinafter defined) of persons 'participating or interested' therein (as hereinafter defined)." [29 U. S. C. Sec. 113 (a) (3)]

The Act defines "persons participating or interested" as follows:

"A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers of employees engaged in such industry, trade, craft, or occupation." [29 U. S. C. Sec. 113 (b)]

A labor dispute is defined as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." [29 U. S. C. Sec. 113 (c)]

It is certainly clear that the relief is sought against all of the respondent-defendants in this case. They are persons who are engaged in the same industry, trade or craft. They have a direct or indirect interest therein; and they are members, officers or agents of an association composed in whole or in part of employers or employees engaged in the industry.

The defendants can be classified as follows:

(a) Owners of fishing vessels and equipment, themselves engaged in the catching of fish on such vessels, and members of the Union;

(b) Lessees of fishing vessels and equipment, themselves engaged in the catching of fish on such vessels, and members of the Union;

(c) Crews of such fishing vessels working with the owners or the lessee-operators, and members of the Union;

(d) Officers of the Union, Chenowith and Weaver;

(e) The defendant Union, which is composed in part, if not in whole, of employees in the fishing industry;

(f) The defendants Chase and Marks, who are fish dealers, engaged in the same industry. They own and operate a fleet of fishing vessels, employing thereon members of the Union;

(g) The unnamed parties, acting in concert with the named defendants, who are members of unions of maritime employees on fish processing vessels and owned and operated by the petitioner-plaintiff.

The petitioner-plaintiff is engaged in the fishing industry as a fish dealer or buyer and processor and distributor.

The District Court found these facts, but added in words of description that the fishermen are:

"Directly employed by no one, but are producers and independent contractors who fish when and where they choose, and dispose of their fish to whomsoever they select, limited only by a voluntary agreement among themselves as members of the defendant, the Pacific Coast Fishermen's Union."
(R. 56)

It concluded that there could be no "labor dispute" over "conditions of employment" between the petitioner and independent contractors. (R. 43-44, 99)

But an analysis of the facts found by the District Court, as distinguished from its mixed conclusions of law embodied in the findings of fact, reveal that a direct

employer-employee relationship is involved in this case. The District Court found that at least five of the fishermen, members of the Union, were using boats heretofore belonging to the plaintiff under the agreement that said fishermen will sell and deliver their fish to the plaintiff until their purchase price is paid for. None of the boats had been paid for. In one case a chattel mortgage had been taken by the plaintiff, under the same agreement. (R. 65) An unnamed number of the fishermen members of the union were fishing from boats owned and operated by the defendants Marks and Chase, also fish dealers, under a lease arrangement, with the same understanding that their catch would be delivered to the boat owner. (R. 92) It further appears that the fish dealers, like the plaintiff, provide ice and other supplies to their fishermen at the beginning of the voyage (R. 87) and provide services for the unloading of the fish at the end of the voyage, such as net racks, tanning tanks and mooring places. (R. 62) The members of the crew of these boats (R. 56) are paid on a "lay basis," that is, a percentage of the price received for the catch.*

We submit that these defendants, lessees and crew members, are employees of fish buyers, including the plaintiff, who own the vessels on which they work and have exclusive control over the catch. We think the decisions under the National Labor Relations Act are in point and helpful. That Act, like the Norris-La Guardia Act, deals with "any employer" and "any employee"; and it contains substantially the same definition of a "labor dispute" as Section 13 (c) of the Anti-Injunction Act. [29 U. S. C. Sec. 152 (2) (3) (9)].

* No findings were made one way or other on this method of payment of crew members, but it can be presumed that it follows the practice of the fishing industry. See, *in/ra* p. 18.)

The National Labor Relations Board has held that fishermen, including captains and all crew members, of boats owned by fish buyers, are employees of the boat owner.

Trawler Maris Stella, Inc. 12 NLRB 415

Federated Fishing Boats of New England and New York, Inc., 15 NLRB 1080

Cape Cod Trawling Corp., 23 NLRB 208

It has repeatedly been held that the compensation of such fishermen is in the nature of wages.

U. S. v. Laflin, 9th Cir., 24 F. (2d) 683.

U. S. v. Peterson, 9th Cir., 28 F. (2d) 29.

The Elk, 1938 A.M.C. 715.

Upon this record, there can be no question as to the employee status of the fishermen employed by the defendant fish buyers, Marks and Chase. The fact that the plaintiff employs the device of a lease in the operation of its boats does not alter the fundamental control it exercises over the fishermen who work on these boats and deliver their catch to it. Nor is this status altered by the nature of the industry which is such that once the men leave the plaintiff's docks and until their return, they decide for themselves where and how to conduct their fishing. In the case of *Harry Murphy, et al.*, 37 NLRB No. 80, the Board held persons to be trucking employees of a logging company, saying:

"The lack of detailed supervision by the company over the trucking work does not seem significant to us, for the work is not readily susceptible of, or normally subject to, detailed supervision, even when performed by a person conceded to be an employee."

The conclusion of the Trial Court expressed as a finding of fact that each of the fishermen "operates his business according to his own desires uncontrolled by the plaintiff or any one else" except the Union, (R. 60) is plainly inconsistent with its own findings of control of the fishermen using boats belonging to fish buyers, including the plaintiff.

The Norris-LaGuardia Act must be construed to inquire into the substance of relations.

Lauf v. E. G. Shinner & Co., 303 U. S. 323, 58 S. Ct. (578).

Milk Wagon Driver's Union v. Lake Valley Food Products, Inc., 311 U. S. 91, 61 S. Ct. 122.

We urge the reasonable principle set forth by the National Labor Relations Board as a guide to the determination of employee-employer relations in the face of diverse contractual relations and mixed elements of control.

Thus the Board has held:

"We are required in administering the Act and in effectuating its policies to inquire into the substance of relationships. As the Board has before stated in another case involving the question of alleged independent contractors: We have had occasion to point out that the statutory definition of the word 'employee' is of wide scope. As defined in the Act, the term embraces 'any employee' that is, all employees in the conventional as well as legal sense except those by express provision excluded. The primary consideration is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual of the rights guaranteed and the protection afforded by the Act. The matter is not conclusively settled by a contract

which adverts to and purports to establish the status of such persons other than as employees." *James E. Stark Company*, 33 NLRB No. 186.*

A similar rule has been laid down by the Wage-Hour Division for the determination of employee status in the case of mining leases, under the Fair Labor Standards Act (Act of June 25, 1938, No. 718, c. 676; 52 Stat. 1060; 29 U. S. C. Sec. 201-219) (See *Wage-Hour Release* No. 928, July 27, 1940.

* In addition to the fishing cases cited above, we have collected the Board decisions on "independent contractors." Those finding an employment relation are: *Metro-Goldwyn Mayer Studios*, 7 NLRB 662, 686-690, professional writers working exclusively for one company; *Seattle Post-Intelligencer Department of Hearst Publications*, 9 NLRB 1262, 1270-1275, newspaper distributors own their own trucks, hiring their own assistants, exclusively for one company; *KMOX Broadcasting Station*, 10 NLRB 479, free lance announcers and radio artists; *Connor Lumber & Land Co.*, 11 NLRB 776, 786-787, lumber workers under subcontractor with entire control but working on premises of company; *Interstate Granite Corp.*, 11 NLRB 1047, colorable lease of department to foreman disregarded; *American Scale Co.*, 19 NLRB 124, colorable lease; *Sun Life Insurance Co.*, 15 NLRB 817, insurance canvassers; *Park Floral Company*, 19 NLRB 403, colorable lease of greenhouses; *Edward F. Reichelt, et al.*, 21 NLRB 263, 275-281, colorable lease of fur business; *The Kelly Company*, 34 NLRB No. 156, two truck owners working exclusively for company held employees, one working for others as well held independent contractor; *Phelps-Dodge Corp. Copper Queen Branch, Smelter Division*, 34 NLRB No. 103, crew working on equal share tonnage basis; *Post Standard Company*, 34 NLRB No. 32, newspaper distributors; *Hearst Publications, Inc. (Los Angeles Examiner Dept.)*, 25 NLRB No. 74, district managers of circulation department under terms fixed by custom and oral understanding; *Stockholders Publishing Co.*, 28 NLRB No. 151, newspaper distributors; *Life Insurance Co. of Virginia*, 29 NLRB No. 44, insurance debit collectors; *Supreme Liberty Life Insurance Co.*, 32 NLRB No. 18, industrial insurance agents, canvassers and "special agents"; *Twentieth Century Fox Films*, 32 NLRB No. 130, artists who work on premises exclusively for one company held employees, those working for more than one held not employees; *James E. Stark Co.*, 33 NLRB No. 186, lumber crew working under contractor at hours and wages fixed by company; *John Yasek*, 37 NLRB No. 20, truckers for lumber company; *Harry Murphy, et al.*, 37 NLRB No. 80, truckers owning trucks under no detailed supervision, but working for one company.

The cases finding no employment relation are: *Daniel Creek & Logging Co.*, 13 NLRB 184, fallers and buckers using own equipment over whom the company has no control; *Markham & Callow, Inc.*, 13 NLRB 963, boomers and truckers owning own equipment over whom company has no control; *Federal Ice & Cold Storage Co.*, 18 NLRB 161, retail ice distributors who control own routes and purchase ice from more than one ice making company; *Theurer Wagon Works, Inc.*, 18 NLRB 837, 869-870, artist working on piece basis for others as well; *Houston Chronicle Publishing Co.*, 28 NLRB No. 155, newsboys under no supervision selling other articles and other newspapers; *Palmer-Berg*, 35 NLRB No. 74, truck owners hauling for others; *Paramount Pictures, Inc., et al.*, 33 NLRB No. 82, piece-work readers working at home for more than one company.

In the light of this principle, it must be held the plaintiff was seeking an injunction against its own employees, their union, other employees in the same industry and occupation, and other persons having a direct or indirect interest therein.

What is the dispute in this case? It is over the contract offered by the Union, requiring the plaintiff to deal with its members only, and enforced by the provisions of the Union constitution prohibiting Union members from delivering catches outside the Union agreement. The findings of fact expressly declare that there is no dispute over the price of fish or any other matter between the plaintiff and the fishermen. (R. 65-66, 76) Surely, this condition of exclusive employment is a term or condition of employment as to the five fishermen using boats under a lease arrangement with the plaintiff. It is a condition of employment for the fishermen on the boats owned and operated by Marks and Chase. And as to the Union, representing these employees and the independent fishermen and their employees, it is both a term or condition of employment and a question concerning the association or representation of such persons, regardless of the proximate relation of employer and employee.

Milk Wagon Drivers Union v. Lake Valley Food Products, Inc., supra.

New Negro Alliance v. Grocery Co., 303 U. S. 552, 58 S. Ct. 703.

Lauf v. Shinner & Co., supra.

Senn v. Tile Layers Protective Union, 301 U. S. 468, 57 S. Ct. 857.

The unity of interest between the fishermen who own and operate their own boats, on the one hand, and the

fishermen who are employees of the plaintiff and other boat owners; on the other hand, does not make this a case of a combination between employees and non-labor groups such as was condemned in *United States v. Brims*, 272 U. S. 549, 47 S. Ct. 169, or disapproved in *United States v. Hutcheson*, 312 U. S. 219, 232, 61 S. Ct. 463, 466.

This is rather a case where, due to the particular conditions of the industry, workers and owner-workers have a joint interest as such in their mutual conditions of employment. It arises from the fact that fishermen work together in crews of not more than three, and workers and working boat owners receive their remuneration by a common division of the price of the catch, which is paid by the fish dealers, including the plaintiff, who own and operate their own fleet of boats or buy from independent fishermen and their crews.*

* It is necessary at this point to recall to the Court the fact that the fishing industry has a unique method of remunerating employees. That method is known as the "share" or "lay" basis. We quote from an official study of the United States Department of Labor, entitled "Earnings and Methods of Payment in the Fishing Industry":

"A distinguishing feature of the fishing industry is the wide variety in the methods of wage payment. Compensation both by straight wages on a time basis and by piece rates exists. In the marine fisheries, however, by far the most common plan is to pay each member of the crew by a share in the value of the catch. Under this plan the compensation received by individual fishermen is primarily dependent on the quantity of fish caught and the unit price received for them, and secondarily on the items deducted from the gross revenue before arriving at the crew's share.

"The arrangement whereby the value of the catch of a fishing craft working on shares is distributed among the persons and interests concerned is known as a "lay." A share fisherman may receive a wage or a bonus on a time or percentage basis in addition to or in lieu of a share in a lay. This arrangement, however, ordinarily applies only to persons with exceptional responsibility, such as the captain, mate, or pilot; or to members of the crew engaged in specialized work, such as the engineer, fireman, radio operator, or cook." (*Monthly Labor Review*, September 1936, United States Government Printing Office, Series No. 3437.) See, *The Elk*, *supra*, 1938 A. M. C. at p. 725.

While the findings of fact do not specifically deal with this condition, it is nevertheless set forth in paragraph III of the Answer (R. 23), and there is nothing in the findings of fact which are inconsistent therewith. Indeed the findings set forth that the owners of the fishing boats to a "substantial extent employ the labor of others to assist them, in carrying on their fishing operations." (R. 56).

Moreover, the plaintiff alleged and the District Court found that the defendant union is a fishermen's co-operative organized under the federal statutes. (15 U. S. C. Secs. 521-522) We shall deal later with the significance of this cooperative aspect of the defendant union. At this point, we submit that the narrow line between a cooperative and a union in the fishing industry does not erect a barrier against the immunities of the Norris-LaGuardia Act. Thus, a cooperative has been defined as:

"A union of individuals, commonly laborers or small capitalists, formed for the prosecution in common of a productive enterprise, the profits being shared in connection with the amount of capital or labor contributed by each member." (18 C. J. S. p. 127)

In *Tobacco Growers Coop. v. Jones*, 185 N. C. 265, 276, 117 S. E. 174, 179, cited with the approval in the case of *Liberty Warehouse v. Burley Tobacco Growers*, 276 U. S. 71, 48 S. Ct. 291, the Court said:

"In effect the cooperative system is the most useful movement ever inaugurated to obtain justice for and improve the financial condition of farmers and laborers."

See, *Mooney v. Farmers Mercantile & Elevator Co.*, 138 Minn. 199, 164 N. W. 804.

We submit that this case is governed by the principles already laid down by this Court and that it is one growing out of a labor dispute within the meaning of the Norris-LaGuardia Act.

II. THE RECORD IN THIS CASE FAILS TO SHOW ANY VIOLATIONS OF THE ANTITRUST LAWS UPON WHICH ANY RELIEF, INJUNCTIVE OR OTHERWISE, COULD BE GRANTED.

The second branch of our argument is based upon the proposition that neither the complaint, nor the findings of fact herein show any cause of action whatsoever under the antitrust laws. It would follow that regardless of whether or not this is a "labor dispute," the decree of the District Court should be set aside in its entirety. All parts of the decree are before this Court. (See Statement of Points on Appeal, R. 129-134) The respondents as appellants before the Circuit Court of Appeals objected to each portion of the decree except paragraph "I" thereof holding that the plaintiff is engaged in commerce among the several states and with foreign nations within the meaning of the antitrust laws. (R. 107)

Assuming that the record is sufficient, disposition of the entire case can be made here. In any event, the portions of the decree granting an injunction are clearly before this Court and the declaratory portions of the decree holding the contracts invalid are so connected with the injunction that they should be dealt with together. Since the damages authorized by the original decree were waived by the plaintiffs and the decree amended accordingly (R. 121-123), a decision on the validity of the injunction and the declaratory adjudication would completely dispose of the case.

Viewing this case apart from the Norris-LaGuardia Act, we see that it involves a single question: May a combination of fishermen endeavor to perfect their organization to achieve through their organization complete control over the capture of fish and the delivery

thereof to fish dealers. Other issues, such as prices or price-fixing, exclusion of competitors, or combinations with non-producers, are not before this Court.

This is the only question set forth in the Complaint and the Findings of Fact. Petitioner's attempt now to argue that price-fixing is involved runs directly counter to its own allegation, embodied in the Findings of Fact, that:

"said market price for fish in said area is established is said trade organization (Union) in agreement with the various dealers, including the plaintiff, who purchase fish in said area, and as aforesaid, there was no disagreement between the plaintiff and the fishermen selling fish to the plaintiff over the price thereof, or over any other matter entering into the business between said plaintiff and said fishermen, and except for the interference, by the defendants with business relations between said plaintiff and said fishermen, said fishermen would have continued to catch fish and sell and deliver same to plaintiff." (R. 13)

While the petitioner charged in paragraph XIV of its Complaint that the defendants entered into a plan to "control the marketing and price of all fish products," the only acts alleged in support thereof are the efforts of the defendants to obtain the exclusive contract. (R. 14) In the same way, the findings of fact of the District Court specifically deal with the exclusive contract and the corresponding provisions of the Union constitution and by-laws, and the charge of monopoly is only a conclusion of law drawn from these facts.

The organization in question is an unincorporated association. Whether it is a labor union or a fishermen's cooperative authorized by the federal statute makes no difference. The only issue is whether the laws

of the United States dealing with labor unions and with producers' cooperatives have guaranteed to such organizations immunity from the antitrust laws so far as the perfection of their organization is concerned.

Assuming that the Union is a labor union, we think is settled beyond dispute that, under the antitrust laws, a labor union may make an agreement with the employers in the industry requiring that all employees belong to the union. And this immunity exists regardless of the extent of the union's membership. It may be by a union which has 100 percent of the employees and is dealing with all of the employers in the industry. The effect of all-union conditions in an industry is two-fold:

- (a) To eliminate competition throughout the industry among employees in the sale of their services to the employer;
- (b) To eliminate competition throughout the industry among employers based upon differences in labor standards.

This Court in the *Apex* case squarely ruled that these effects upon commerce are not subject to the prohibitions of the antitrust laws. It said:

"A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted, either because it was not thought to be unreasonable or because it was not deemed a 'restraint of trade.' Since the enactment of the declaration in Section 6 of the Clayton Act that 'the labor of a human being is not a commodity or article of commerce . . . nor shall such (labor) organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws,' it would seem plain that re-

straints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act.

Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands. But under the doctrine applied to non-labor cases, the mere fact of such restrictions on competition does not in itself bring the parties to the agreement within the condemnation of the Sherman Act, *Appalachian Coals, Inc., v. United States*, *supra*, 288 U. S. 360, 53 S. Ct. 474, 77 L. Ed. 825, *supra*.

Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, see *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78; 66 L. Ed. 189, 27 A. L. R. 360, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act. See, *Levering & G. Co. v. Morrin*, *supra*; cf. *American Foundries case*, *supra*, 257 U. S. 209, 42 S. Ct. 78, 66 L. Ed. 189, 27 A. L. R. 360, *supra*; *National Assn. of Window Glass Manufacturers v. United States*, 263 U. S. 403, 44 S. Ct. 148, 68 L. Ed. 358. And in any case, the restraint here is, as we have seen, of a different kind and has not been shown to have any actual or intended effect on price or price competition." (310 U. S., at pp. 502-504; 60 S. Ct., pp. 997-998)

A. F. of L. v. Swing, 312 U. S. 321, 61 S. Ct. 568.

Senn v. Tile Layers Protective Union, *supra*.

National Protective Assoc. v. Cumming, 170 N.Y. 315, 63 N.E. 369, 58 L. R. A. 135.

National Fire Proofing Co. v. Mason Builders' Association, 2nd Cir., 169 F. 259.

Edelstein, v. Gillmore, 2nd Cir., 36 F. (2d) 81, cert. den. 280 U. S. 607.

F. F. East Company, Inc. v. United Oystermen's Union, No. 19600, 128 N. J. Eq. 27, 15A (2d) 129.

Kingston Trap Rock Co. v. Local 825, 129 N. J. Eq. 570, 19A (2nd) 661.

Williams v. Quill, 277 N. Y. 1, cert. den. 303 U. S. 621, 58 S. Ct. 650.

McKay v. Retail Automobile Salesmen's Local No. 1067, 16 Cal. (2d) 311, 106 P. (2d) 373, cert. den. 313 U. S. 566, 61 S. Ct. 939.

The All-Union Shop in the Courts (June 1938), 6 I. J. A. 147.

Turning to the alternative and undisputed view that the respondent Union here is not a labor union, but a legal fishermen's cooperative, the same conclusion applies. The perfected organization of such a producers' cooperative is likewise immune from the antitrust laws.

The federal statute authorizing marketing cooperatives specifically provides that:

"Persons engaged in the fishing industry as fishermen . . . may act together in associations, corporate or otherwise, . . . in collectively, producing, preparing for market, processing, handling and

marketing for interstate and foreign commerce such products of said persons to engaged. . . . Said associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes. . . ." (15 U. S. C. Sec. 521)

The next section authorizes the Secretary of Commerce to proceed against any association for an injunction if

"The Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any product is unduly enhanced by reason thereof. . . ." (15 U. S. C. Sec. 522)

The legislative history of this section is brief. The Committee Report stated that:

"The purpose of this bill is to provide for the fishery industry cooperative associations such as are provided for farmers by the Capper-Volstead Act. (Ch. 57, 42 Stat. 388, U. S. C. Title 7, Sec. 29-2) This bill is identical with that Act except that this bill applies to producers of aquatic products and not to farmers."

The Report further^o quoted the testimony of the Chief of the Division of Fishery Industries of the United States Bureau of Fisheries:

"As a corollary to this disorganized situation, and because credit is dried up, during the emergency, we have witnessed the industry indulging in destructive price cutting and other destructive practices which have reflected largely on the fishermen, resulting in lowering income to the point where their very livelihood is in jeopardy. Thus the very evils which the Administration is trying to correct are

practically apparent in the fishery industry, namely, the volume of the products of the industry in interstate and foreign commerce has been diminished; the capacity of production units has been decreased; the necessity for organization among trade groups is everywhere apparent; and because of destructive price cutting, the purchasing power of fishermen and processors has been reduced; thousands of earners have been thrown out of regular employment, and one of our great natural resources is being exploited unwisely." (Report accompanying H. R. 9233, 73d Cong. 2d Sess. Report No. 1504)

There was very little debate on the bill. It was called on the House consent calendar on May 31st, 1934, and Congressman Bland, its sponsor and chairman of the reporting committee, stated:

"The statement I want to make is simply that this bill provides for the same relief to the fishermen that has already been given to the farmers. There is no change in the law except that it is made applicable to fishermen. Their desperate condition throughout the country, as well as their desire to organize in order to better themselves, is the basis of this legislation." (78 Cong. Rec. 9175)

The bill was objected to on the ground that voluntary cooperatives had not helped producers very much. But on June 7th, 1934, the bill was again called on the consent calendar and this time it was passed. (78 Cong. Rec. 10745) In the Senate, the bill was passed on the consent calendar without debate. (June 18th, 1934, 78 Cong. Rec. 12421)

We believe that the legislative history makes one thing particularly clear, namely, that Congress favors the complete organization of fishermen into cooperatives. And the desperate conditions of fishermen in general which gave rise to the enactment of the law are found to be

present in this particular case, giving rise to the formation of the Union. (Findings of Fact XXXVIII, XLVI, R. 88, 93)

We submit that the purpose of the statute embraces the complete organization of fishermen into a cooperative which will handle their product and govern their dealings with those to whom their catch is delivered and sold. We submit that so long as the only activities challenged by a suit under the antitrust laws relate to efforts of a cooperative to make the cooperative the exclusive agency representing the producers, then the only thing before this Court is the combination of producers *per se*, and such a combination *per se* cannot be held to be a violation of the antitrust laws.

The District Court expressly found that there was an "open, competitive market" for fish and other marine products on the Pacific Coast. Its decree rests solely upon the conclusion that the exclusive contracts tend to create a monopoly. (R. 74) But that combination is exactly what both the federal cooperative law and Section 6 of the Clayton Act protect.* See *United States v. Rock Royal Co-op.*, 307 U. S. 533, 562, 59 Sup. Ct. 993, 1008.

The judicial decisions dealing with cooperatives have given full effect to this legislative policy. They have ruled that the efforts of cooperatives to obtain exclusive dealings for their members are immune from the antitrust laws.

Liberty Warehouse v. Burley Tobacco Growers, supra.
Tobacco Growers Coop. v. Jones, supra.

* Clayton Act, Sec. 6, 38 Stat. 713, 15 U. S. C. Sec. 17. While a fisherman's cooperative is not, strictly speaking, an agricultural or horticultural organization named in this section, it is embraced within the federal policy as expressed therein.

Olympia Mill Products Assoc. v. Herman, 176 Wash. 338, 29 P. (2) 676.

High Grade Dairies v. Fall City Milk Producers Association, 261 Ky. 25, 86 S. W. 2, 1046.

In the *Liberty Warehouse Company* case, suit was brought by a tobacco growers cooperative under the state act, authorizing such cooperatives, against a warehouse which had accepted tobacco from a cooperative member in violation of the member's agreement with the cooperative to deliver his products exclusively to it. The statute imposed penalties in the form of fines, injunctions and misdemeanors upon any warehouse accepting tobacco from a member in breach of his exclusive agreement with the cooperative.

The issue before the Court was whether such an exclusive agreement between the cooperatives and its members was in violation of the antitrust laws. The Court held that it was not, and upheld the penalty clauses imposed by the state statute. In justification, the Court quoted from the opinion of the state court in the case of *Dark Tobacco Growers Coop. v. Dunn*, 150 Tenn. 614, 266 S. W. 308:

"For each pound of tobacco which is not delivered to the association by a member, there is a pro rata increase in the operating costs of the association; and that increase cannot be estimated in terms of money with definite exactness. For every defection of one member, there is a certain amount of dissatisfaction, engendered among other members; indeed other members are not encouraged to deliver their tobacco and *the normal increase of the association's membership is prevented.*" (Italics added)

The Court then went on to say, in its own words, that

"The opinion generally accepted—and upon reasonable grounds, we think, is that the cooperative marketing statutes promote the common interest. The provisions for protecting the fundamental contracts against interference by outsiders are essential to the plan. This Court has recognized as permissible some discrimination intended to encourage agriculture."

In the *Olympia Milk Producers Association* case, the agreement between the members and the cooperative provided that a member would not

"sell or dispose of his milk or dairy products to or through any person, firm or corporation other than the association."

The Court granted specific enforcement of this provision, although it was in a contract authorized by the state law binding the member for a ten-year period.

We say that the same policy, which protects a cooperative in obtaining exclusive dealings from its members, entitles it to obtain exclusive dealings from the dealers purchasing the products of its members. The specific practices of fixing prices, excluding commercial competition or restricting production, are, we repeat, not before this Court.* What we are saying is that so long as the action of the cooperative is related only to the protection of its organization in securing exclusive relations between all the producers on the one hand, and all of the dealers on the other hand, there is no violation of the antitrust laws because this is the end promoted, encouraged and favored by the policy behind the statutes and the judicial decisions favoring cooperative action.

* The recent decision in *Manaka v. Monterey Sardine Industries, Inc.*, D. C. N. D. Cal. S. Div. Oct. 20, 1944, 4 Lab. Cases, Par. 60, 731, may be distinguished as a case involving the unjustifiable exclusion of competitors.

If the cooperative in the *Liberty Warehouse* case could require its members to deliver all their goods to them, then under the same policies and principles it can require that the dealers will buy only from the cooperative and not from non-members.

If the State of Kentucky in the *Liberty Warehouse* case could lawfully impose legal penalties upon dealers who accept goods from those who breach their exclusive agreements with the cooperatives, then the cooperative itself is entitled to use its own economic strength to compel dealers to refrain from purchasing from any one who is not a member of the cooperative.

A decision denying to cooperatives in this case, the right to demand exclusive dealings from purchasers of the products of its members is only another way of saying that a cooperative may not use its bargaining power to protect and extend its organization.

This Court has recognized the privilege of a cooperative to use its economic power to secure exclusive arrangements with dealers. In the case of *United States v. Rock Royal Cooperative, supra*, a dealer or handler refusing to abide by a milk marketing Order under the Agricultural Marketing Act of 1937, rested upon two defenses, among others, (a) that the producers cooperatives had used coercion to secure the adoption of the Order, and (b) that the Order gave discriminatory favors to such cooperatives. Of the first, this Court said:

"These tactics consisted of threats to handlers that if they did not comply with the Order, the producers would withhold delivery of milk. These schemes, the lower court determined, were so successful in securing the drafting, adoption and acceptance of the Order that a conspiracy to monopolize interstate commerce contrary to the Sherman

Antitrust Act, was established . . . We do not agree . . . *The coercion by the League . . . is the partisan coercion of the producer seeking to compel dealer support of the plan by the threat of the use of his economic power over his own milk.*" (307 U. S. at pp. 558, 559, 59 S. Ct. at pp. 1005-1006) (Italics added)

Of the second, this Court said:

"These agricultural cooperatives are the means by which farmers and stockmen enter into the processing and distribution of their own crops and livestock. The distinctions between such cooperatives and business organizations have repeatedly been held to justify different treatment." (Id. p. 563, 1008)

The same problem arose in the Kentucky case of *High Grade Dealers v. Fall City Milk Producers*, supra, where the Court said:

"Appellant, claiming that he had been in the milk distributing business for a long time, and that he had built up a sizeable business, which had at all times been operated in accordance with the ordinances of the city, relating to the sale of milk, filed suit against the appellees for damages to his business, and sought an injunction against them to prevent alleged interferences with the conduct of his business. . . .

The plaintiff's right to recover damages can be easily disposed of. The burden of his complaint is that the activities of the defendants tortuously prevented his getting sufficient milk to serve his customers to the consequent damage of his business. Conceding that there were periods during which plaintiff could not procure enough milk to meet his needs because of the actions of the Association, it by no means follows that there can be a substantial recovery. The gist of his action is his failure to get

milk. Prior to the inception of the alleged torts of the Association he was buying his milk from producers who were members of the Association and from some who were not members. *The Association was free at any time to refuse to sell the milk of its members and free to refuse to let its members sell their milk to him direct. . . . It is clear that the major portion of his milk shortage was caused by the legitimate and proper act of the Association in refusing to let its members' milk go to one who was openly hostile!*" (Italics added)

The instant case is to be distinguished from the case of *United States v. Borden*, 182 U. S. 308, 60 S. Ct. 188, because no question of combining with non-producers groups or of prices, exclusion of competitors, or other practices of restricted production or suppression of competition, are involved.

In fact, the *Borden* case recognizes the right of producers to unite together and condemns only the very things which are expressly found to be absent in this case. We think this Court summarized the holding of the *Borden* case holding in the following excerpt:

"The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or conspiracy with other persons in restraint of trade that these producers may see fit to devise. In this instance, the conspiracy charged is not that of merely forming a collective association of producers to market their products but a conspiracy, or conspiracies, with major distributors and their allied groups, with labor officials, municipal officials, and others, in order to maintain artificial and non-competitive prices to be paid to all producers for all fluid milk produced in Illinois and neighboring States and"

marketed in the Chicago area, and thus in effect, as the indictment is construed by the court below, 'to compel independent distributors to exact a like price from their customers' and also to control 'the supply of fluid milk permitted to be brought to Chicago.' 28 F. Supp. at pages 180-182. Such a combined attempt of all the defendants, producers, distributors and their allies, to control the markets finds no justification in Section one of the Capper-Volstead Act." (308 U. S. at pp. 204-205, 60 S. Ct. at p. 191)

The findings of fact in this case state that there is an open and competitive market for fish and other marine products on the Pacific Coast, that the defendants will accept into membership any able-bodied fisherman who is willing to comply with its constitution and by-laws, that the defendant is willing to sell fish to any fish dealer who will accept its contract for exclusive dealings, that the respondent-defendants do not prevent the plaintiff from operating its own fishing fleet if it so desires, and that there is no evidence tending to show that the wholesale or retail prices paid by consumers have been enhanced by the activities of these defendants.

We submit that in the light of these findings, the fishermen's cooperative Act is the exclusive remedy against any tendency on the part of the combination *per se* to result in any monopoly or restraint of trade. In the *Borden* case the Court, dealing with an analogous provision of the Capper-Volstead Act, said:

"We think that the procedure under Section two of the Capper-Volstead Act is auxiliary and was intended merely as a qualification of the authorization given to cooperative agricultural producers by Section one, so that if the collective action of such producers, as there permitted, results in the opinion of the Secretary in monopolization or unduly en-

hanced prices, he may intervene and seek to control the action thus taken under Section one. But as Section one cannot be regarded as authorizing the sort of conspiracies between producers and others that are charged in this indictment, the qualifying procedure for which Section two provides is not to be deemed to be designed to take the place of, or to postpone or prevent, prosecution under Section one of the Sherman Act for the purpose of punishing such conspiracies." 308 U. S. at p. 206, 60 S. Ct. at p. 192.

These findings show that the only action involved herein is the collective action of the producers, directly permitted and encouraged by the fishermen's cooperative Act. It may be assumed that a fishermen's cooperative will make contracts relating to the marketing of its product which will cover "the catching, reducing to possession and ownership, sale and delivery of fish." (R. 108) But the very purpose of the Cooperative Act is to exempt from the antitrust laws fishermen's cooperatives formed for the purpose of marketing their products. That this is the essence of the exemption can be seen by contrast with commercial combinations. In the case of *U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, 60 S. Ct. 811; the defendants argued that they were entitled to combine in order to meet "competitive abuses." But, said the Court:

"Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress. Cer-

tainly Congress has not left us with any such choice. Nor has the Act created or authorized the creation of any special exception in favor of the oil industry." 310 U. S. at p. 221, 60 S. Ct. at p. 843.

Congress has created and authorized a special exception in favor of the fishing industry. The policy behind this exception has recently been stated by this Court, in terms applicable to the case at bar:

"These large sections of the population—those who labored with their hands and those who worked the soil—were as a matter of economic fact in a different relation to the community from that occupied by industrial combinations. Farmers were widely scattered and inured to habits of individualism; their economic fate was in large measure dependent upon contingencies beyond their control. In these circumstances, legislators may well have thought combinations of farmers and stockmen presented no threat to the community, or, at least, the threat was of a different order from that arising through combinations of industrialists and middlemen. At all events legislation like that of Texas rested on this view, curbing industrial and commercial combinations, and did not visit the same condemnation upon collaborative efforts by farmers and stockmen because the latter were felt to have a different economic significance." *Tigner v. Texas*, 310 U. S. 141, 145, 60 S. Ct. 879, 881.

In the light of the *Borden* case, the findings herein dispose of any possible claim of "conspiring producers, distributors and their allies." Notwithstanding the conclusions of the District Court, (R. 101) there is no combination within the meaning of the antitrust laws between the respondent Union and the respondent fish dealers, Marks and Chase, because the Union was willing to deal with the plaintiff upon the same terms as with these and other fish dealers.

No other facts in the record of this case show any violation of the antitrust laws. The reference to the use of "threats, intimidation and coercion" by the respondents (R. 63) turns out to be only the exercise of its discipline against breaching members who have made exclusive agreements with it. (R. 83-84) Such action is clearly protected by the ruling of the *Liberty Warehouse* case, which also protects the refusal of the respondent union to accept into membership, fishermen who would not agree to exclusive membership. (R. 69-70) The supporting action of other maritime organizations in refusing to work for the plaintiff in its processing and canning operations (R. 94) is clearly action within the same industry by groups having common interests, and therefore within the area of allowable economic conflict.

The great Brandeis stated the fundamental issue involved in this case in his dissenting opinion in the case of *Liggett & Co. v. Lee*, 288 U. S. 517, 579, 53 S. Ct. 481, 501. He said:

"The citizens of Florida might conceivably escape from the domination of giant corporations by having the state engage in business . . . But Americans seeking escape from corporate domination have open to them under the Constitution another form of social and economic control—one more in keeping with our traditions and aspirations. They may prefer the way of co-operation, which leads directly to the freedom and equality of opportunity which the 14th Amendment aims to secure. That way is clearly open. For the fundamental difference between capitalist enterprise and the cooperative—between economic absolutism and industrial democracy—is one which has been accepted by the legislatures and the courts as justifying discrimination in both regulation and taxation. *Liberty Warehouse Co. v. Burley Tobacco Growers' Coop.*, 276 U. S. 71, 48 S. Ct. 291, 72 L. Ed. 473."

The defendant cooperative in this case is asking only that it be allowed to withhold its group action from any dealer who refuses to recognize it as the exclusive agency for its members. If the principle of cooperation is sound, then the exercise of economic power to promote and establish cooperatives must be allowed.

The plaintiff, a large corporation selling to consumers and buying from fishermen 60% of the fish produced in the state of Oregon and a very substantial amount of the fish produced in Washington and Alaska, is confronted with the economic action of a fishermen's cooperative that has secured 90 to 100% membership among the fishermen, exercising their economic strength to protect their cooperative organization. The plaintiff wants the help of the courts to break the cooperatives and to be free to use its own uncontrolled economic power against the disbanded fishermen.

CONCLUSION

It is respectfully submitted that the decree of the District Court herein should be vacated and the complaint of the petitioner should be dismissed.

LEE PRESSMAN,

JOSEPH KOVNER,

ANTHONY WAYNE SMITH,

BEN ANDERSON,

Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 142.—OCTOBER TERM, 1941.

Columbia Rivers Packers Association, Inc., Petitioners,

vs.

H. B. Hinton, George Bambrick, J. B. Brandt, Charles J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenowith, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, Its Officers and Members.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 2, 1942.]

Mr. Justice BLACK delivered the opinion of the Court.

The petitioner filed a bill for an injunction charging that the respondents attempted to monopolize the fish industry in Oregon, Washington, and Alaska, in violation of the Sherman Act. 26 Stat. 209. The Norris-LaGuardia Act declares that no federal court shall, except under certain specified circumstances, have jurisdiction to issue an injunction in any case which involves or grows out of a "labor dispute."¹ The jurisdictional requirements were not present here. But the District Court held that since this case did not involve or grow out of a "labor dispute", these requirements were

¹ " . . . no court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act. . . . " 47 Stat. 70.

2 *Columbia River Packers Association, Inc. vs. Hinton et al.*

irrelevant; and finding that the respondents had violated the Sherman Act to the injury of the petitioner, issued the injunction sought. 34 F. Supp. 970. The Circuit Court of Appeals reversed, holding that a "labor dispute" was involved and that the District Court was therefore without jurisdiction to enjoin. 117 F. 2d 310. To review this question, we granted certiorari. 314 U. S. —.

The petitioner has plants for processing and canning fish in Oregon, Washington, and Alaska. It distributes its products in interstate and foreign commerce. Its supply of fish chiefly depends upon its ability to purchase from independent fishermen. The dispute here arose from a controversy about the terms and conditions under which the respondents would sell fish to the petitioner.

The respondents are the Pacific Coast Fishermen's Union, its officers and members,² and two individuals who, like the petitioner, process and sell fish. Although affiliated with the C. I. O., the Union is primarily a fishermen's association, composed of fishermen who conduct their operations in the Pacific Ocean and navigable streams in Washington and Oregon and some of their employees. The fishermen own or lease fishing boats, ranging in value from \$100 to \$15,000, and carry on their business as independent entrepreneurs, uncontrolled by the petitioner or other processors.

The Union acts as a collective bargaining agency in the sale of fish caught by its members. Its constitution and by-laws provide that "Union members shall not deliver catches outside of Union agreements", and in its contracts of sale it requires an agreement by the buyer not to purchase fish from nonmembers of the Union. The Union's demand that the petitioner assent to such an agreement precipitated the present controversy. Upon the petitioner's refusal, the Union induced its members to refrain from selling fish to the petitioner, and since the Union's control of the fish supply is extensive the petitioner was unable to obtain the fish it needed to carry on its business.

We think that the court below was in error in holding this controversy a "labor dispute" within the meaning of the Norris-LaGuardia Act. That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a "controversy concerning terms or conditions of employment, or concerning the association . . . of persons . . . seeking to

² Two of the respondents, although members of the Union, are not fishermen. They are buyers for processors.

arrange terms or conditions of employment" calls for no extended discussion. This definition and the stated public policy of the Act—aid to "the individual unorganized worker . . . commonly helpless . . . to obtain acceptable terms and conditions of employment" and protection of the worker "from the interference, restraint, or coercion of employers of labor"—make it clear that the attention of Congress was focussed upon disputes affecting the employer-employee relationship, and that the Act was not intended to have application to disputes over the sale of commodities.³

We recognize that by the terms of the statute there may be a "labor dispute" where the disputants do not stand in the proximate relation of employer and employee. But the statutory classification,⁴ however broad, of parties and circumstances to which a "labor dispute" may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing. Our decisions in *New Negro Alliance v.*

³ Cf. Section 6 of the Clayton Act: " . . . the labor of a human being is not a commodity or article of commerce." 38 Stat. 731. The Norris-La-Guardia Act, manifesting "the purpose of the Congress further to extend the prohibition of [Section 20 of] the Clayton Act", *New Negro Alliance v. Grocery Co.*, 303 U. S. 552, 562, cannot be taken as having erased the distinctions between an association of commodity sellers and an association of employees. Specific recognition by Congress of associations of fishermen as sellers of commodities has been given in an act "Authorizing associations of producers of aquatic products." 48 Stat. 1213.

⁴ Section 13 of the Act provides:

"When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) or 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 Stat. 73.

4 *Columbia River Packers Association, Inc. vs. Hinton et al.*
Grocery Co., 303 U. S. 552, and *Drivers' Union v. Lake Valley Co.*,
311 U. S. 91, give no support to the respondents' contrary conten-
tion, for in both cases the employer-employee relationship was the
matrix of the controversy.

The controversy here is altogether between fish sellers and fish buyers. The sellers are not employees of the petitioners or of any other employer nor do they seek to be. On the contrary, their desire is to continue to operate as independent businessmen, free from such controls as an employer might exercise. That some of the fishermen have a small number of employees of their own, who are also members of the Union, does not alter the situation. For the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours or other terms and conditions of employment of these employees.

We are asked to consider other contentions pressed by the respondents which it is said would support the reversal below. But the Circuit Court neither canvassed nor passed upon these contentions. It will be free to do so upon remand.

Reversed.

Mr. Justice ROBERTS and Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

